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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 248.

THE MOSLER SAFE AND LOCK COMPANY, APPELLANT,

vs.

MOSLER, BAHMAN AND COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JULY 13, 1885.

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INDEX.

	Original	Print.
Caption	1	1
Bill of complaint	1	3
Bond for costs	20	7
Subpœna	22	7
Marshal's return	24	9
Motion for preliminary injunction	25	9
Appearance for respondent	27	9
Order denying motion for preliminary injunction	28	10
Answer	29	10
Replication	38	13
Stipulation as to use of printed patents as evidence	40	14
Stipulation as to facts	42	14
Evidence for complainant	44	15
Notice to take testimony	45	16
Exhibits offered	48	16
Affidavit of Michael Hemler	53	18
Exhibit A—Letters Patent No. 273,585, granted M. Mosler, March 6, 1883	58	19
B—Letters Patent No. 281,640, granted M. Mosler, July 17, 1883	59	20
C—Letters Patent No. 283,136, granted M. Mosler, August 14, 1883	60	23

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 19, 1887.

	Original.	Print.
Exhibit D—Assignment of M. Mosler to M. S. & L. Co., Aug. 23, 1883	62	25
E—Assignment of M. Mosler to M. S. & L. Co., Aug. 23, 1883	64	26
F—Assignment of M. Mosler to M. S. & L. Co., Aug. 23, 1883	66	27
H—Papers in interference between Goehler & Mosler	68	28
I—Specification, &c., of Goehler, filed Feb. 20, 1882	84	36
Evidence for respondent	91	39
Record of Goehler, interference	92	39
Notice to take testimony	92	39
Testimony of Henry Kech	93	40
August Schultze	101	44
Chas. Buffler	113	53
Louis Gerwe	121	57
Herman Schmidt	127	61
Leopold Moritz	129	62
George Thorwarth	132	64
John Hardtle	145	72
Geo. J. H. Goehler	156	79
Anton Stoekle	198	106
Leopold Moritz, (recalled)	203	109
George Thorwarth, (recalled)	208	112
Louis Gerwe, (recalled)	210	113
Friedrich Bahman	211	115
Henry Moorman	212	115
Joseph L. Hall	223	121
George Berkmeyer	227	124
Stipulation as to record of Goehler, interference	235	128
Record of Mosler, interference	237	129
Notice to take testimony	237	129
Testimony of Chas. J. Graeser	238	130
Max Mosler	246	138
Julius Mosler	253	145
Max Mosler, (cross)	265	157
Chas. J. Graeser, (recalled)	274	166
John Theo. Moellers	275	167
Michael Hemler	279	171
Edw. C. Reemelin	296	188
Michael Hemler, (resmued)	300	192
Moses Mosler	311	203
Notary's certificate	355	247
Testimony of Charles Rippl	357	249
Julius C. Hintz	375	254
John Hurst	379	256
Moses Mosler	391	259
Geo. J. Murray	417	268
Geo. Therwarth	426	271
Notary's certificate	431	272
Exhibit Goehler Patent, No. 1—Letters Patent No. 268,010, granted G. J. H. Goehler, November 28, 1882	433	273
Exhibit Goehler Patent, No. 2—Letters Patent No. 268,011, granted G. J. H. Goehler, November 28, 1882	436	275

	Original.	Print.
Exhibit Skidmore English Letters Patent—English Letters Patent No. 1000, granted Thomas Skidmore, April 7, 1865	439	278
Exhibit McFarland Design Patent—Letters Patent No. 3814, granted W. McFarland, January 11, 1870	447	281
Order allowing time to take rebutting testimony	448	282
Evidence for complainant in rebuttal	448	282
Notice to take testimony	449	282
Testimony of Abraham W. Sargent	450	283
Theo. Moellers	454	284
Notary's certificate	465	288
Evidence for respondent	467	288
Exhibit Goehler File and contents—File wrapper and contents in the matter of the application of Geo. J. H. Goehler, filed February 20, 1882	467	288
Opinion	515	307
Decree	523	311
Order allowing appeal	523	311
Appeal bond	524	311
Citation	526	313
Proof of service of citation	527	313
Clerk's certificate	528	313

1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and the western division of the southern district of Ohio, begun and held at the United States court-rooms, in the city of Cincinnati, in the said division and district aforesaid, on the first Tuesday of February, being also the third day of that month, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth year—present, the Honorable Geo. R. Sage, one of the judges—among the proceedings had were the following, to wit:

MOSLER SAFE AND LOCK CO.
vs.
MOSLER, BAHMAN AND CO. } In Equity. 3568.

Be it remembered that heretofore, to wit, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and *and* eighty-three, came the said complainants herein, the said The Mosler Safe and Lock Company, as aforesaid, by George J. Murray, its solicitor, and filed in the office of the clerk of the court
2 aforesaid in this cause its certain bill of complaint against the said defendant herein, the said the Mosler, Bahman and Company as aforesaid, and which said bill of complaint so as aforesaid filed is clothed in the words and figures as follows, to wit:

3 *Bill of Complaint.*

Circuit Court of the United States for the Southern Dist'c. of Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO.
vs.
MOSLER, BAHMANN & CO. } No. 3568.

To the honorable the judges of the circuit court of the United States for the southern district of Ohio, western division:

The "Mosler Safe and Lock Company," a corporation organized under the laws of the State of Ohio and having its place of business at Cincinnati, in said State, brings this its bill of complaint against Mosler, Bahmann and Company, a corporation organized under the laws of the State of Ohio and having its place of business at Cincinnati, in said State, and therefore your orator, humbly complaining, shows unto your honors that heretofore and before the 6th day of March, 1883, one Moses Mosler was the original, first, and sole inventor of a certain new and useful improvement in fire-proof safes, fully described in the letters patent hereinafter
4 mentioned, and which had not been known or used before his invention thereof, and which was not at the time of his application so hereinafter mentioned in public use or on sale in the United States for more than two years, and that being so as aforesaid the first and original inventor and discoverer of said improvements, and being also a citizen of the United States, on the said 6th

day of March, 1883, upon due application therefore, did obtain letters patent of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was granted and secured to the aforesaid Moses Mosler, heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, useing, and vending to others to be used, the said invention and improvements as set forth in said letters patent, which are in the possession
5 of your orator ready to be produced as your honors may direct, and by virtue whereof he, the said Moses Mosler, became the sole owner of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent.

And your orator further shows unto your honors that afterwards, to wit, on or about the 23rd day of August, 1883, the said Moses Mosler, by an instrument in writing of that date, sold, assigned, and transferred unto your orator, Mosler Safe & Lock Co. all his right, title, and interest in and to said letters patent and invention in fire-proof safes and the right to all royalties, profits, or damages for the unlawful use of said invention from the date of said patent, which assignment was duly recorded in the Patent Office of the United States, as by said assignment or a duly authenticated copy thereof and the certificate of such recording thereto affixed ready in court to be produced will fully and at large appear.

And your orator further, humbly complaining, shows unto
6 your honors that heretofore and before the 17th day of July, 1883, the said Moses Mosler invented certain new and useful improvements in fire-proof safes, whereof he was the original, first, and sole inventor, and which had not been known or used before his said invention of the same, and which had not been in use or on sale for more than two years before his application for letters patent therefore, and that, being such inventor as aforesaid, and desirous of obtaining an exclusive property in the said invention, he made application in writing to the Commissioner of Patents of the United States for such letters patent, expressing such desire as aforesaid, pursuant to the acts of Congress of the United States in such cases made and provided, and complied in all other respects with the requirements of said acts, and that, being so aforesaid the original, first, and sole inventor, and being also a citizen of the United States, letters patent were thereupon issued to the said Moses Mosler, under the seal of the Patent Office of the United States, signed by
7 the Secretary of the Interior and countersigned by the Commissioner of Patents in due form of law, bearing date the day and year aforesaid, whereby there was granted to the said Moses Mosler, for seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvements and inventions, a description and specification whereof — given in the words of Moses Mosler in the schedule annexed to the said letters patent and the

designs accompanying the same and made part thereof, as by reference to the said letters patent now in the pos-ession of your orator ready to be produced as your honors may direct will more fully and at large appear, and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows unto your honors that afterwards, to wit, on or about the 23rd day of August, 1883, the said Moses Mosler, by an instrument in writing of that date, sold, assigned, and transferred unto your orator, The Mosler Safe and Lock Company, all his right, title, and interest in and to the said letters patent
8 and invention in fire-proof safes and the right to all royalties, profits, or damages for the unlawful use of the said inventions and improvements upon the date of said letters patent, which assignment was duly recorded in the Patent Office of the United States, as by said assignments or a duly authenticated copy thereof and the certificate of such recording thereto affixed ready in court to be produced will fully and at large appear.

And your orator further, humbly complaining, shows unto your honors that heretofore and before the 14th day of August, 1883, the said Moses Mosler invented certain new and useful improvements in method of bending angle irons, whereof he was the original, first, and sole inventor, and which had not been known or used before his said invention of the same, and which had not been in public use or on sale for more than two years before his application for letters patent therefor, and that, being such inventor aforesaid, and desirous of obtaining an exclusive property in the said invention, he made application to the Commissioner of Patents of the
9 United States for such letters patent, expressing such desire aforesaid, pursuant to the acts of Congress of the United States in such cases made and provided, and complied in all other respects with the requirements of said acts, and that, being so as aforesaid the original, first, and sole inventor, and being also a citizen of the United States, letters patent were thereupon issued to the said Moses Mosler, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents in due form of law, bearing date the day and year aforesaid, whereby there was granted to the said Moses Mosler, for seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements, a description and specification whereof — given in the words of Moses Mosler in the schedule annexed to the said letters patent and the designs accompanying the same and made part thereof, as by refer-
10 ence to said letters patent now in possession of your orator and ready to be produced in court as your honors may direct will more fully and at large appear, and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows unto your honors that afterwards, to wit, on or about the 23rd day of August, 1883, the said Moses Mosler, by an instrument in writing of that date, sold, assigned, and transferred unto your orator, Mosler Safe & Lock Co., all his right,

title, and interest in and to the said invention and letters patent and the right to all royalties, profits, and damages for the unlawful use of the said invention from the date of said letters patent, which assignment was duly recorded in the Patent Office of the United States, as by said assignment or a duly authenticated copy thereof and the certificate of such recording thereto affixed ready in court to be produced will fully and at large appear.

And your orator further shows unto your honors that by virtue of the premises it became and now is the sole and exclusive
11 owner of the said several letters patent and the inventions and improvements described therein and of all the rights and privileges granted and secured thereby, and that *they have* invested and expended large sums of money and has been to great trouble in and about the said inventions for the purpose of carrying on the business of making and selling fire-proof safes containing the said inventions and making the same profitable to itself and useful to the public, and that said inventions are and have been of great benefit and advantage, and that large numbers of fire-proof safes were made and sold by your orator containing said inventions to great advantage of the public, and that the public have generally acknowledged and acquiesced to the aforesaid rights of your orator, and your orator believes that it will realize and receive large gains and profits therefrom if infringements by said defendants and its confederates shall be prevented.

And your orator further shows unto your honors that after
12 it had been to a great expense to introduce the said invention to the public, and the public had recognized the great value of said inventions, and before the issue of said letters patent the said defendant, Mosler, Bahmann and Company, procured one George J. H. Goehler, a former employee of your orator, to prepare an application for letters patent for the same inventions described and claimed in the two last-named letters patent, and, after having assigned his pretended right to the same to the defendant, Mosler, Bahmann and Co., to file his said application in the United States Patent Office and demand that an interference be declared between the said application of said Goehler and the then pending application of said Moses Mosler for the inventions covered by the said letters patent; that thereupon an interference was declared by the Commissioner of Patents October 26th, 1882, between the pending applications of said Goehler and Moses Mosler, and a hearing fixed for March 19th, 1883; that proofs were taken by both parties, printed briefs filed, and the case argued by counsel upon said
13 9th day of March, 1883; upon due consideration whereof said examiner of interference rendered his decision on April 5th, 1883, awarding priority of invention to said Moses Mosler; that thereupon said defendant, Mosler, Bahmann & Co., appealed from said decision to the board of examiners-in-chief, a hearing upon which appeal was fixed and had upon the 10th day of May, 1883, and was *agreed* by counsel; upon due consideration whereof the said board of examiners-in-chief rendered their decision unanimously affirming the decision of the examiner of interferences and awarded

the right to the said inventions to Moses Mosler, as by the record of said interference case and the decisions referred to will fully appear; that in this decision of the board of examiners-in-chief the said defendant, Mosler, Bahmann and Company, acquiesced.

Yet the said defendant, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and deprive it of the benefits and advantages which might
14 and otherwise would accrue unto your orator from said inventions in fire-proof safes after the issueing of the letters patent aforesaid and after the date and making of said assignments and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance, and against the will of your orator, and in violation of its rights, and in infringement of each and all of the aforesaid letters patent, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, and vend to others to be used fire-proof safes, each one of which safes was made according to and contained the said several inventions described, shown, and claimed in the three letters patent and each of them aforesaid, and that said defendant still continues to do so, and that the said defendant is threatening to make the aforesaid safes containing said inventions in large quantities and to supply the market therewith and to sell the same.

All in defiance of the rights acquired by and secured to
15 your orator as aforesaid and to its great and irreparable loss and injury, and by which it has been and still is being deprived of great gains and profits which it might and otherwise would have obtained, but which have been received and enjoyed by the said defendant by and through its aforesaid unlawful acts and doings; and your orator further shows unto your honors, on information and belief, that said defendant has sold large quantities of said fire-proof safes and has a large quantity on hand which it is offering for sale, and has made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof.

And your orator says that the use of said inventions by said defendant and its preparation for and avowed determination to continue the same and its other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to
16 and do encourage and induce others to venture to infringe said patents in disregard of your orators rights.

And your orator further shows unto your honors that it has caused notice to be given to said defendant of said infringements and of the rights of your orator in the premises, and requested it to desist and refrain therefrom, but it disregarded said notice and refused to desist from said infringements, and it still continues to make and sell said safes.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, according to its officers' best and utmost knowledge, remembrance, information, and belief, full, true, direct,

and perfect answers make (but not under oath) to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to
17 account for and pay to your orator the profits by it acquired and the damages suffered by your orator from the aforesaid unlawful acts.

And your orator prays that said defendant, Mosler, Bahmann and Co., its officers, servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said inventions or either of them or any part thereof, or any fire-proof safe made in accordance therewith or like or similar to those which it has heretofore made.

Your orator prays that upon entering the decree for infringement as above prayed your honors may proceed to assess or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendant as aforesaid the damages your
18 orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment under the circumstances of the wilful and unjust infringement by said defendant, as herein set forth, and that said defendant may be decreed to pay the costs of this suit, and that your orator may have such other and further relief as to this honorable court shall seem meet and as shall be agreeable to equity; and your orator prays also for a preliminary injunction—

May it please your honors to grant unto your orator the writ of injunction, as well provision as perpetual, issuing it of and under the seal of this honorable court, conformable to the prayer of this bill; and also writs of subpœna, issuing out of and under the seal of this court, directed to the said defendants, Mosler, Bahmann and Company, its officers and directors, commanding it and them
19 by a certain day to appear in this honorable court, then and there to answer unto this bill — complaint, and to abide and perform such order and decree as may be made against it.

MOSES MOSLER,
President Mosler Safe & Lock Company.

GEORGE J. MURRAY,
Solicitor and Counsel for Complainant.

UNITED STATES OF AMERICA, }
Southern District of Ohio, } *ss:*

On this 15th day of September, 1883, personally appeared Moses Mosler, president of Mosler Safe & Lock Co., the above-named complainant, who, being duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the

contents thereof, and that the same is true of his own knowledge, except as to the matter stated on information and belief, and as to these matters he believes — to be true.

MOSES MOSLER.

20 Sworn to before me and subscribed in my presence this 15th day of September, A. D. 1883.

ROB'T C. GEORGI,
Deputy Clerk U. S. Cir. Court, S. D. O.

And afterward, but on the same day as last aforesaid, to wit, on the said the fifteenth day of September, in the year of our Lord one thousand eight hundred and eighty-three, the said complainant aforesaid, by its said solicitor aforesaid, filed in the said the office of the clerk of the court aforesaid in this cause its certain bond for costs, and which said bond for costs so as aforesaid filed is clothed in the words and figures as follows, to wit:

Cost Bond.

In the Circuit Court of the United States for the Southern District of Ohio.

MOSLER SAFE AND LOCK CO.
vs.
MOSLER, BAHMAN AND CO. } No. 3568.

I hereby acknowledge myself security for costs in this case.
(Signed) MOSES MOSLER. [SEAL.]

Taken and acknowledged before me this 15th day September, 1883.

[Seal of the Circuit Court, South Dist. of Ohio.]

(Signed) ROB'T C. GEORGI,
21 *Dep. Clerk U. S. Circuit Court, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Moses Mosler, a resident of said district, do solemnly swear that, after paying my just debts and liabilities, I am worth one thousand dollars in real estate within the jurisdiction of this court and subject to execution, levy, and sale.

(Signed) MOSES MOSLER.

Sworn to and subscribed before me this 15th day of September, A. D. 1883.

[Seal of the Circuit Court, South. Dist. of Ohio.]

(Signed) ROB'T C. GEORGI,
Dep. Clerk U. S. Circuit Court, S. D. O.

And afterward, but on the same day as last aforesaid, to wit, on the said the fifteenth day of September, in the year of our Lord one

thousand eight hundred and eighty-five, there was issued out of the said the office of the clerk of the court aforesaid in this cause our certain writ of subpœna in chancery, directed to the marshal of the United States within and for the said district aforesaid and against the said defendant herein, the said Mosler, Bahman and Co., as aforesaid, and which said writ of subpœna in chancery so as aforesaid issued and directed is clothed in the words and figures as follows, to wit:

22

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Mosler, Bahman and Co., a corporation organized under the laws of the State of Ohio, and citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in December next, to answer a certain bill in chancery filed and exhibited in said court against it by Mosler Safe and Lock Company, a corporation organized under the laws of the State of Ohio, and citizen of and resident in the State of Ohio. Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this fifteenth day of September, A. D. 1883, and in the 108th year of the Independence of the United States of America.

23

[Seal of the Circuit Court, South. Dist. of Ohio.]

Attest: (Signed) WM. C. HOWARD, *Clerk.*

Memorandum.

The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of November, 1883; otherwise the said bill may be taken *pro confesso.*

(Signed) WM. C. HOWARD, *Clerk.*

(Endorsed:) Moses Mosler acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

And afterward, to wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and eighty-three, came the said the marshal of the district aforesaid, to whom in form so as aforesaid was directed the foregoing writ of subpœna in chancery, so as aforesaid issued in this cause out of the said the office of the clerk of the court aforesaid, against the said defendant herein, the said the Mosler, Bahman and Company, as aforesaid, and re-

turned the same into the office of the clerk of court aforesaid, with his proceedings thereon endorsed, clothed in the words and
24 figures as follows, to wit:

Marshal's Return of Subpœna.

Rec'd this writ at Cincinnati, O., Sept. 15th, 1883, and served the same in Hamilton county, O., as follows: On the within-named Mosler, Bahman & Co. by delivering a true copy hereof to George Lindeman, president and secretary, and J. C. Hintz, manager, of said company, each of them personally, Sept. 17th, 1883, at 8.20 a. m.; also by leaving a true — hereof at the residence of Fred. Nacher, vice-president of said company, Sept. 17th, 1883, at 8.25 o'clock a. m.

(Signed) LOT WRIGHT, *U. S. M.*,
By C. E. TWIFORD, *Dep.*

And afterward, to wit, on the eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-three, came the said complainant herein, the said Mosler Safe and Lock Co., by its said solicitor aforesaid, *the* George J. Murray, and filed in the office of the clerk of the court aforesaid in this cause its certain motion for a preliminary injunction, and which said motion for preliminary injunction so as aforesaid filed is clothed in the words and figures as follows, to wit:

25 *Motion for Preliminary Injunction.*

U. S. Cir. Court, Dist. of Ohio, W. D.

MOSLER SAFE & LOCK CO. *vs.* MOSLER, BAHMANN & CO.

Now comes complainant and moves for a preliminary injunction conformable to the prayer of the bill of complainant herein.

GEORGE J. MURRAY,
Solicitor for Compl't.

26 And afterward, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and eighty-three, came the said respondents herein, the said Mosler, Bahman and Company, by James Moore, its attorney, and filed in the office of the clerk of the court aforesaid in this cause its certain appearance herein, and which said appearance so as aforesaid filed is clothed in the words and figures as follows, to wit:

27 *Entry of Ap. of Resp.*

U. S. Cir. Court, Southern Dist. Ohio, W. D. In Equity.

THE MOSLER SAFE & LOCK CO.
vs. } 3568.
MOSLER, BAHMANN & CO.

I hereby enter my appearance for respondent in above-entitled cause.

JAMES MOORE,
Respond't's Solicitor.

And afterward, to wit, on the seventeenth day of November, in the year of our Lord ene thousand eight hundred and eighty-three, an entry was made upon the journal of the court aforesaid in this cause, and which said entry so as aforesaid made is clothed in the words and figures as follows, to wit:

28 *Journal Entry* T, 200.

U. S. Cir. Court, Southern Dist. Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO. *vs.* MOSLER, BAHMANN & CO.

And now, this cause coming on to be heard on the motion of the complainant for a preliminary injunction, and the court having considered the proofs of the parties and heard the arguments of counsel, it is now ordered that the said motion be, and the same is hereby, overruled.

And afterward, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and eighty-three, came the said respondents herein, the said Mosler, Bahman
29 and Co., by James Moore, its solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain answer to the said bill of complaint of the said complainant aforesaid heretofore filed herein, and which said answer so as aforesaid filed is clothed in the words and figures as follows, to wit:

Answer.

U. S. Cir. Court, South. Dist. Ohio, W. D. In Equity.

THE MOSLER SAFE & LOCK CO.
vs.
THE MOSLER, BAHMANN & CO. } 3568.

The answer of the Mosler, Bahmann & Co. to the bill of complaint of the Mosler Safe & Lock Company above named.

This respondent, now and at all times hereafter saving and reserving unto itself all and all manner of benefit of exception which may be had or taken to the manifold errors, uncertainties, insufficiencies, and imperfections of the said bill of complaint, for answer thereto, or unto so much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

30 It admits, upon information and belief, that the several letters patent upon which the bill of complaint is founded were granted to the person and at the time stated in the bill of complaint, but as to whether they or any of them have been assigned as alleged this respondent has neither knowledge, information, or belief; and it denies that any or either of said patents show any invention whatever, and further denies that the said Moses Mosler was the first and original inventor, or an inventor at all, of said

alleged inventions which said patents purport to secure, or of any or either of them or any substantial or material part of either, and further denies that said alleged inventions or either of them have any utility.

Respondent, further answering, denies that the public or any part thereof have acknowledged the validity of said patents or of either of them, or has acquiesced in the exclusive pos-ession of same by said Moses Mosler or the orator; and it further denies that said complainant has expended large or any sums of money or
31 been to any trouble in and about said alleged inventions or for the purpose of carrying on the business of manufacturing or selling safes containing the same.

Respondent, further answering, admits, upon information and belief, that there was an interference in the Patent Office between said Moses Mosler and the said George J. H. Goehler upon the alleged invention described and claimed in the letters patent dated July 17th, 1883, but denies that there was any interference declared upon either of the alleged inventions purporting to be secured by either of the other patents upon which the bill of complaint is founded, and says further, upon information and belief, that the judgment in favor of said Mosler in the interference that did exist was rendered not because the proof showed said Mosler to have been an inventor, but because said Goehler having made the invention in question while in the employ of complain-t, and being then in the employ of this respondent, it was not deemed equitable that the ownership of the patent should be in any concern other than that in whose
32 shop the invention had been made.

Respondent, further answering, denies that it has infringed either of said patents, or that it has made or sold since the dates of said patents, respectively, any safes containing either of the inventions described and claimed in either of the patents upon which the bill of complaint is founded, but it alleges that, prior to the commencement of this suit, it has made and sold safes in accordance with letters patent No. 268,010, granted upon the invention of G. J. H. Goehler, November 28th, 1882, for "bending angle iron," to this respondent.

Respondent, further answering upon information and belief, deny that said Moses Mosler was the first and original inventor of the inventions or any of them or any part thereof described and shown in the said letters patent upon which the bill of complaint is founded, or in either of said letters patent; but, on the contrary, it was that prior to the time of said alleged inventions the same was well known and publicly used in divers places in the United States,
33 and, among others, in the following places, which uses were known, among others, to the following persons:

At the safe factories of Theodore Waslauck and of Theodore Waslauck & Co., situated at No. 212 South Second street, St. Louis, Missouri; at the safe factory of Beard Brothers, in said St. Louis; at the safe factory of Charles Boercker, at No. 10 North 3rd street, in said St. Louis; at the safe factory of Herring & Co., in the city and State of New York, which uses were known to Charles Hirche, who

resides in said St. Louis; to John B. Clark, who resides at Warsaw, Missouri; to Theodore Waslauck, who resides at No. 212 South Second St., in said St. Louis; to Ludwig Beer, who resides at No. 1006 North Sixth St., said St. Louis, and to Charles Boercker, who resides at No. 12 North Third street, in said St. Louis; also at the following safe factories in Cincinnati, in the State of Ohio: At the Cincinnati Safe & Lock Co., at Hall's Safe & Lock Co., and at Mos-
34 ler, Bahmann's & Co.'s factory, which uses are known, among others, to John Hurst, who resides at No. 45½ Jones street, in said Cincinnati, and to Charles Rippe, who resides at No. 34 Western avenue, in said Cincinnati; also at the safe factory of complainant, The Mosler Safe & Locke Co., which use was known to the following, among other, persons: Henry Kech, who resides at No. 162 Orchard street, Newport, Kentucky; Louis Gerwe, who resides at No. 161 Twelfth street, Covington, in said Kentucky; Leopold Moritz, who resides at the southwest corner of German & Harris streets, in said Newport; to August Schultze, who resides at No. 107 Twelfth street, in said Cincinnati; to Charles Baffler, who resides at No. 209 Linn street, in said Cincinnati; to Hermann Schmidt, who resides at No. 587 Sycamore street, said Cincinnati; to George Thorwarth, who resides at No. 17 Browne street, said Cincinnati; to John Hardtle, who resides at southwest corner McMicken avenue & Findley street, said Cincinnati; to George J. H. Goehler, who
35 resides at York, in the State of Pennsylvania, and to John C. Hintz, who resides at No. 12 Gorman street, in said Cincinnati.

Respondent, further answering, says that it denies, upon information and belief, that the said Moses Mosler was the original and first inventor or discoverer of any material and substantial part of either of alleged inventions or things patented in either of the patents upon which the bill of complaint is founded, and further says that this fact—that said Mosler was not inventor as aforesaid—is known to all persons whose names are given in the last preceeding paragraph.

Respondent, further answering, says, upon information and belief, that prior to the time of the said alleged inventions by the said Moses Mosler the same were fully shown and described in all their material and substantial parts in the following letters patent:

English letters patent granted to Thomas Skidmore on the 7th day of October, 1865, for "improvements in the construction
36 of safes or receptacles for securing and protecting valuable property," numbered 1000; U. S. letters patent No. 97423 granted to William McFarland November 30th, 1869, for "improvements in safes;" letters patent No. 3814, being for a design and granted to William McFarland January 11th, 1870.

And the respondent prays the same advantage of its answer aforesaid as if it had pleaded the several matters and things aforesaid to the bill of complaint herein, without this, that any other matter or thing in said bill of complaint contained and not herein and hereby well and sufficiently answered, traversed or denied, confessed or avoided, is true, to the knowledge or belief of this respondent; all of which things respondent is ready and willing to aver, maintain, and

prove as this honorable court shall direct, and it prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

MOSLER, BAHMANN & CO.,
By G. LINDEMANN,
President of Mosler, Bahmann & Co.

JAMES MOORE,
Resp'd't's Solicitor.

37 And afterward, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and eighty-four, came the said complainants aforesaid herein, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid its certain replication to the foregoing the said answer of the said respondents aforesaid so as aforesaid heretofore filed herein, and which said replication so as aforesaid filed is clothed in the words and figures as follows, to wit:

38 *Replication.*

Circuit Court of the United States for the Southern District of Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO. *vs.* MOSLER, BAHMANN & CO. } 3568.

The replication of Mosler Safe and Lock Co., complainants, to the answer of Mosler, Bahmann & Co., defendants.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say- it will ever maintain, will prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to
39 be replied unto by these repliants, without this, that any other matter or thing whatsoever in said answer were contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in its said bill of complaint it has already prayed.

GEORGE J. MURRAY,
Complainant's Solicitor.

And afterward, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-three, came the said parties hereto, by their said solicitors as aforesaid, and filed in the office of the clerk of the court aforesaid in this cause their certain

stipulation herein, and which said stipulation so a- aforesaid is clothed in the words and figures as follows, to wit:

40 *Stipulation*

U. S. Cir. Court, Southern Dist'c. Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO.
vs.
THE MOSLER, BAHMANN & CO. } 3568.

It is hereby stipulated and agreed by and between the parties hereto that either party may offer specifications and drawings of patents printed by the Patent Office with the same effect as if all such patents were duly certified by the Commissioner of Patents.

JAMES MOORE,
Respondent's Solicitor.
GEORGE J. MURRAY,
Complainant's Solicitor.

41 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said parties herein aforesaid, by their said solicitors aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause their certain stipulation herein, and which said stipulation so as aforesaid filed is clothed in the words and figures as follows, to wit:

42 *Stipulation.*

U. S. Cir. Court, South-rn Dist. Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO.
vs.
MOSLER, BAHMANN & CO. } No. 3568.

It is hereby stipulated and agreed by and between the parties hereto as follows:

1st. That prior to any of the alleged inventions of said Moses Mosler referred to in the bill of complaint herein fire-proof safes having their bottoms constructed like the wooden model marked Exhibit A, and referred to in the affidavits of Charles Rippl and John Hurst now in file in the cause, were made and publicly used and sold in this country.

2nd. That round-cornered fire-proof safes similar to the safe shown to the court at the hearing of motion for preliminary injunction in this cause and now in the possession of defendant were made and publicly used and sold in this country prior to any of the alleged inventions of Moses Mosler referred to in the bill of complaint, said safe being more particularly described and identified by affidavits of Theodore Waslauck, Ludwig Beer, and Charles
43 Boercker, now on file in this cause.

3rd. That the printed copies of the testimony taken in the recent interference before the Patent Office between George J. H. Goehler and Moses Mosler are true copies thereof and may be read in the cause with the like effect as if they were certified by the Commissioner of Patents as being the true copies. A copy of said Mosler's testimony as also a copy of Goehler's are herewith filed in the cause.

(Signed) JAMES MOORE,
Resp'd't's Solicitor.

(Signed) GEORGE J. MURRAY,
Complainant's Solicitor.

44 And afterward, to wit, on the twenty-first day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said the complainant herein aforesaid, by its said solicitor aforesaid and filed in the said the office of the clerk of the court aforesaid, in this cause the certain depositions of sundry persons heretofore taken in this cause before Alfred B. Benedict, Esq., a notary public in and for the said county of Hamilton and State of Ohio, pursuant to the notice annexed thereto, on behalf of the said the complainant herein aforesaid, and which said deposition so as aforesaid herein filed is clothed in the words and figures as follows, to wit:

45 *Depositions by Comp'l't.*

U. S. Cir. Court, Southern Dist. of Ohio, W. D. In Equity.

THE MOSLER SAFE & LOCK CO.
vs.
THE MOSLER-BAHMANN CO. } 3568.

The defendant will take notice that the complainant will examine witnesses in the above-named cause under the 67th rule, in equity, as amended, before Alfred B. Benedict, Esq., notary public, at the office of George J. Murray, room 28 Wiggin's block, S. E. corner of Fifth and Vine streets, Cincinnati, Ohio, on Thursday, 20th day of March, 1884, beginning said examination at 10 o'clock a. m. of said day and continuing from day to day until completed.

GEORGE J. MURRAY,
Solicitor for Complainant.

46 Received copy March 19th, 1884.

JAMES MOORE,
Respo'd't's Solicitor.

47 U. S. Cir. Court, S. D. of Ohio, W. D.

MOSLER SAFE & LOCK CO.
vs.
THE MOSLER-BAHMANN CO. } 3568.

SIR: You will please take notice that the complainant in the above cause desires the evidence to be adduced therein to be taken orally under the 67th rule of the Supreme Court, as amended.

GEO. J. MURRAY,
Solicitor for Compl't.

To James Moore, Esq., solicitor for defendant.

Received copy March 19th, 1884.

JAMES MOORE,
Respo'd't's Solicitor.

48 United States Cir. Court, South. Dist. of Ohio, W. D. In Equity.

THE MOSLER SAFE & LOCK CO.
vs.
THE MOSLER-BAHMANN CO. } 3568.

Evidence taken pursuant to the annexed notice on behalf of the Mosler Safe & Lock Co.

Present: George J. Murray, on behalf of complainant, and James Moore, Esq., on behalf of defendant.

Complainant herewith offers in evidence printed copy of specification and drawings of letters patent of the United States No. 273,585, granted to Moses Mosler, bearing date March 6th, 1883, marked "Complainant's Exhibit A," A. B. Benedict, notary public.

49 Also printed copy of specification and drawings of letters patent of the United States No. 281,640, granted to Moses Mosler, and dated July 17th, 1883, marked Complainant's Exhibit B, A. B. Benedict, notary public.

Also printed copy of specifications and drawings of letters patent of the United States No. 283,136, granted to Moses Mosler, and dated August 14th, 1883, marked Complainant's Exhibit C, A. B. Benedict, notary public.

Also assignment from Moses Mosler to the Mosler Safe & Lock Company, dated August 23rd, 1883, marked "Complainant's Exhibit D, A. B. Benedict, notary public."

Also assignment from Moses Mosler to the Mosler Safe & Lock Company, dated August 23rd, 1883, marked "Complainant's Exhibit E, A. B. Benedict, notary public."

Also assignment from Moses Mosler to the Mosler Safe and Lock Company, dated August 23rd, 1883, marked "Complainant's Exhibit F, A. B. Benedict, notary public."

50 Also the fire-proof safe which was used at the hearing of the motion for a preliminary injunction in this case and now in possession of the complainant, having the name of Mosler, Bahmann & Co. painted thereon and which is to be marked "Complainant's Exhibit G, A. B. Benedict, notary public."

Also certified copy from the file of the Patent Office "of certain papers in the matter of the interference between George J. H. Goehler and Moses Mosler for improvements in safes," marked Complainant's Exhibit H, A. B. Benedict, notary public.

Also certified copy from the files of the Patent Office of the specification, petition, oath, and drawing as originally filed in the matter of the application of George J. H. Goehler, filed February 20th, 1882, for improvement for bending angle iron bar safes, etc., marked "Complainant's Exhibit I, A. B. Benedict, notary public.

51 Respondent admits that the safe above offered in evidence and marked "Complainant's Exhibit G, A. B. Benedict, notary public," was manufactured by respondent and was sold by them on the 25th day of August, 1883.

Respondent consents that the affidavit of Michael Hemler, dated October 11th, 1883, and on the same day filed in this cause may be read upon the hearing herein with the same effect as if it had been taken in the form of a deposition before this special examiner under the 67th rule, in equity.

The affidavit of Michael Hemler above referred to is herewith offered in evidence, marked "Complainant's Exhibit J, A. B. Benedict, notary public," and the officer is requested to attach the same to the deposition.

5. Complainant here closes his *prima facie* case.

STATE OF OHIO, }
Hamilton County, } *ss:*

52 I, Alfred B. Benedict, a notary public in and for said county and acting special examiner herein, do hereby certify that the foregoing depositions were taken before me pursuant to the annexed notice, at the time and place therein specified; that complainant was present by his counsel, George J. Murray, and respondent by their counsel, James Moore; that such proceedings — had as hereinabove appear, and that Complainant's Exhibits A, B, C, D, E, F, G, H, I, J were introduced in evidence in said cause during the taking of said depositions.

Witness my hand and notarial seal this 20th day of March, A. D. 1884.

ALFRED B. BENEDICT,
Notary Public, Hamilton County, Ohio,
and Acting Special Examiner.

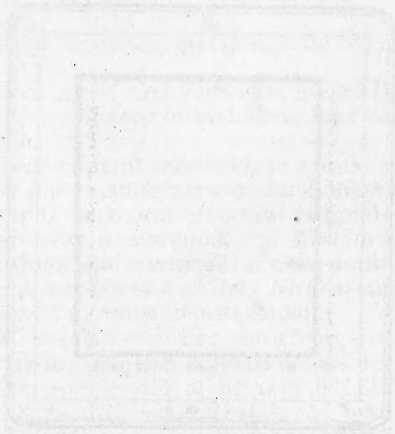
53 STATE OF OHIO, *Hamilton County,* } ss:

Circuit Court of the United States for the Southern Dist. of Ohio, W. D. In Equity.

MOSLER SAFE & LOCK CO. *vs.* MOSLER-BAHMANN CO. } No. 3568.

Michael Hemler, of lawful age, being first duly sworn, deposes and says that he is a resident of Cincinnati, Ohio; that he has been engaged in the manufacture of safes for the past thirty-five years, and for about thirty years of that time he has been engaged as foreman, superintendant, and proprietor of safe works, and that he is thoroughly familiar with all branches of the business of manufacturing safes. Affiant says that he has carefully read and
54 fully understands the inventions shown, described, and particular pointed out in the claims of the following letters patent of the United States, to wit: No. 273,585, granted to Moses Mosler for fire-proof safes, and dated March 6th, 1883; No. 281,640, granted to Moses Mosler for fire-proof safes, and dated July 17th, 1883; No. 283,136, granted to Moses Mosler for "method of bending angle iron," and dated August 14th, 1883. Affiant says that he is familiar with the construction of the safes now being manufactured by Mosler, Bahmann & Co., of this city, and that he has carefully examined the safe of their make now at the factory of Mosler Safe & Lock Co., which was purchased, as he is informed and believes, from the said Mosler, Bahmann & Co. by W. R. Nevin about the 25th of last August; that the said safe is built upon angle-iron frames which were formed from angle bars, one of the sides of which was cut away, leaving a curve facing the uncut side, whereby said uncut side was bent to bear upon said curve to form rounded corners, and that one of these frames so cut and bent is
55 used in the front and one in the back of the safe. Affiant says this safe undoubtedly embodies all the features of the invention described and particularly referred to in the three claims of the said letters patent No. 281,640. Affiant says that the angle frames in this safe are formed by cutting away a portion of one web of the angle bar by a cut which severed the two webs at their junction for a distance equal to the arc of the corner, and by removing sufficient of metal in front of the single part of the uncut web to permit the same to bend to the desired angle, and to insure the edges of the opening meeting to form a close joint as the bars were bent. This is the method fully described and particularly pointed out in the claim of the said patent No. 283,136 of August 14th, 1883.

Affiant further says that the said Mosler, Bahmann & Co.'s safe has a sheet-metal cover bent around the top sides and lower
56 corners of these bent angle frames, and has a lower removable plate secured to bars which are secured to the edges of the sheet-metal cover, so that the safe can be conveniently filled from



(No Model.)

M. MOSLER.

FIRE PROOF SAFE.

No. 273,585. Patented Mar. 6, 1883.

No. 248
M. S. & I. Co.
v.
M. B. & Co.
} p. 58

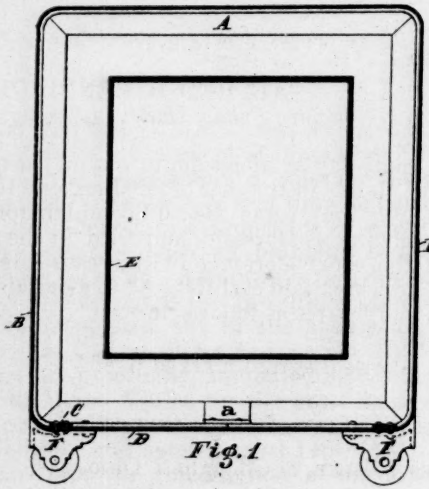


Fig. 1

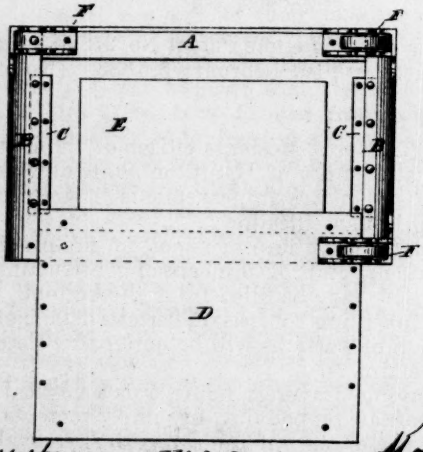


Fig. 2

Attest
Chas. F. Gessert
E. C. Dunwell

Inventor
Moses Mosler
By his Atty J. H. Murray
Atty

the bottom, the said safe being constructed, so far as this feature is concerned, substantially like the Mosler safe described and particularly claimed in the letters patent No. 273,585. *Affidavit* is clearly of the opinion that the said safe made and sold by Mosler, Bahmann & Co. embodies all the features of the inventions described and pointed out in the claims of the three letters patent above referred to.

MICHAEL HEMLER.

Subscribed and sworn to before me this 11th day of October, 1883.

ALFRED B. BENEDICT,
Notary Public, Hamilton County, Ohio.

57 And on the same day as aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said complainant herein aforesaid, by its said solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibit "A" herein, and which said Exhibit "A" so aforesaid filed is clothed in the words and figures as follows, to wit:

(Here follows diagram marked p. 58.)

58½ UNITED STATES PATENT OFFICE.

MOSES MOSLER, of Cincinnati, Ohio.

Fire-Proof Safe.

Specification forming part of Letters Patent No. 273,585, dated March 6, 1883. Application filed February 5, 1883. (No model.)

To all whom it may concern:

Be it known that I, Moses Mosler, a citizen of the United States, residing in Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in fire-proof safes, of which the following is a specification.

My invention relates to an improvement in fire-proof safes, the object being to provide an improved means of constructing the outer casing so that the safe may be filled from the bottom. With this object in view, my invention consists in certain details of construction and combination of parts, as will be hereinafter described, and pointed out in the claim.

In the accompanying drawings, figure 1 is a vertical transverse section of a fire-proof safe ombodying my improvements. Fig. 2 is an inverted plan view of the safe, showing the removable bottom plate drawn out, or rather started into its place.

The front and back frames, A, of the safe are formed from angle bars which have one side cut away where the bends are to be made and the uncut side bent around to close the joint in the corner and form a frame with its outer corners rounded. The meeting joint at

the bottom of the frame is united by a short angle piece, *a*, overlapping the joint on the inside and screwed or riveted to the frame A.

B is the sheet-metal cover, which is bent around the top sides and around the lower rounded corners of the frames. Upon each edge of the sheet B, between the angle-frames, are secured metal bars C, which project beyond the edges of the sheet B to form rests for the bottom plate D.

E is the customary sheet-metal box forming the interior receptacle. It is secured to the cast-metal door-frame in the usual manner.

The top of the caster-frame F conforms to the curve of the rounded corners, and after the plate D is pushed into its place the inner bolts which secure the caster-frames pass through the angle-frames and plate D.

I do not claim in this application the bent angle-frames, nor the safe composed of these frames and the sheet bent around them, the same being shown and claimed by me in a pending application.

What I claim as new, and desire to secure by letters patent, is—

The combination in a fire-proof safe of the frames A, sheet-metal cover B, bent around the top sides and lower corners, with bars C, and lower removable plate, D, substantially as specified.

MOSES MOSLER.

Witnesses:
CHAS. F. GESSERT.
GEO. J. MURRAY.

59 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said the complainant herein aforesaid, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibit "B," and which said Exhibit "B" so as aforesaid filed is clothed in the words and figures as follows, to wit:

(Here follows diagram marked p. 59.)

EXHIBIT "B."

59½ UNITED STATES PATENT OFFICE.

MOSES MOSLER, of Cincinnati, Ohio.

Fire-Proof Safe.

Specification forming part of Letters Patent No. 281,640, dated July 17, 1883. Application filed December 27, 1881. (No model.)

To all whom it may concern:

Be it known that I, Moses Mosler, of the city of Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in safes, of which the following is a specification.

No 248
M. S. V. L. Co. } p. 69
v
M. S. & Co

(No Model.)

M. MOSLER.

FIRE PROOF SAFE.

No. 281,640. Patented July 17, 1883.

Fig. 1.

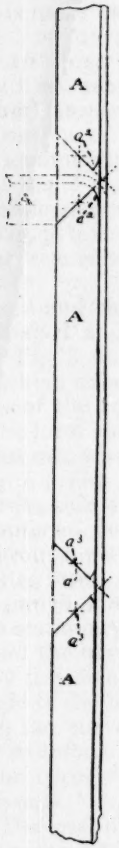


Fig. 2.

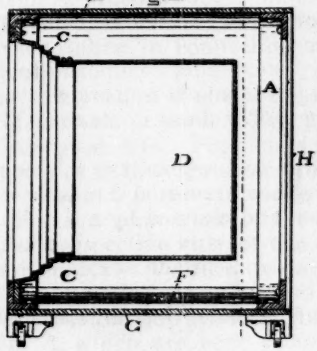


Fig. 5.



Fig. 3.

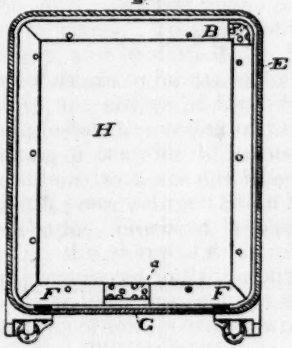


Fig. 4.

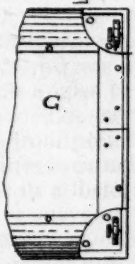
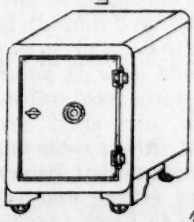
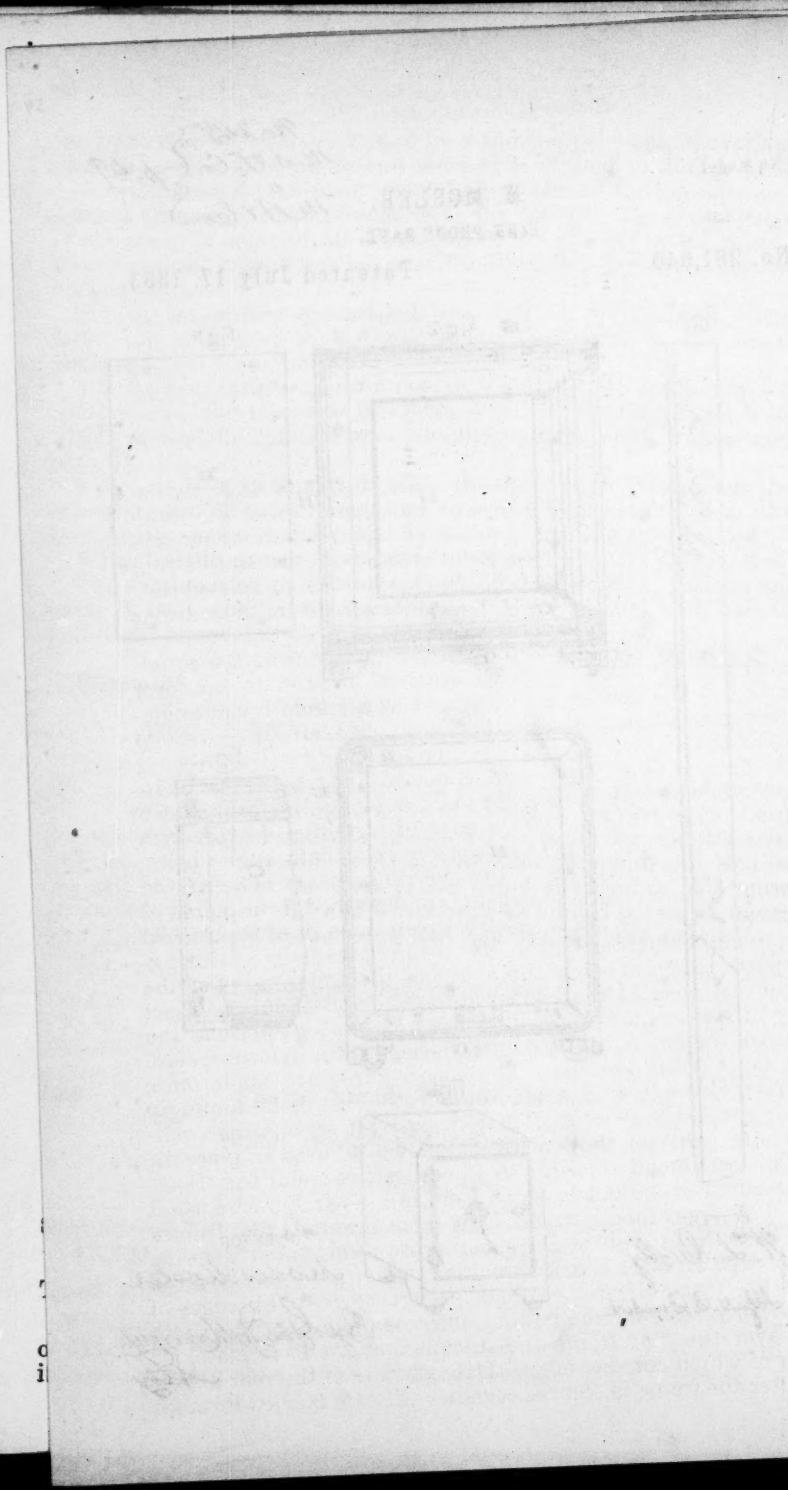


Fig. 6.



Attest
Wm. L. Dudley
Alfred A. Benedict

Inventor
Moses Mosler
By Geo. H. Munson
Atty



The object of my invention is to make a stronger and better safe at a much less cost than any heretofore produced. I have found that a great item of expense in the manufacture of fire-proof safes (to which class of safes my invention particularly relates) is the blacksmith-work, and the consequent labor of finishing over this work on the emery-wheel upon outside surfaces. By my present invention I am enabled to almost entirely dispense with this work, and at the same time make a much stronger and better safe, and one that is more easily finished, as will be seen from the following description of my invention, taken in connection with the accompanying drawings, in which—

Figure 1 is a plan view of a portion of one of the angle-bars from which the frame-work of my safe is made. Fig. 2 is a transverse vertical section of my improved safe. Fig. 3 is a vertical section taken in a plane at right angles to the view shown in Fig. 2 through line *x x*. Fig. 4 is a plan view of a portion of the inverted safe with bottom plate removed; Fig. 5, a plan view of the central bottom plate. Fig. 6 is a reduced perspective view of the completed safe.

Similar reference-letters indicate identical parts in the various views.

The front and back frames of the safe are formed from the equal-sided L-shaped angle-bars A, which are bent around to the form shown in Fig. 3, and the ends united and firmly held by an angle-piece, *a*, which overlaps the joint upon the inside, and is secured to both sides of the angle-bar by rivets. To admit of the bar A being bent to the form shown, Fig. 3, and in dotted line, Fig. 1, one of its sides is cut out, where the bends are to be made, to the form shown at *a'*, Fig. 1. The joint-lines are angles of forty-five degrees with the opposite side of the angle-bar, the vertex of both angles being in the center of the thickness of the side to be bent. The curved ends a^2, around which the side is bent, are described from points a^3 in the miter-lines. The blank piece between these lines is punched out by a punch of suitable shape. The bend is made in a forming-press, the stationary die being the shape of the inner curve of the corner, and the movable die concaved to fit the outer curve, or *vice versa*. By this means the miter-lines are brought together and the outer angle of the bar A, at the corners, is bent down to form a close joint with the curved portions. The corner-joints are made more secure by re-enforce pieces B, made of malleable cast metal to snugly fit into the corners, and secured therein by riveting or other well-known means. One of these pieces is shown secured in place in Fig. 3. The cast-metal door-frame C, with sheet-metal box D attached, is secured to the inside of the front angle-bar A in the usual manner. The sheet-metal cover E is bent around the frames formed of bars A, the ends of the sheet terminating under the safe. Upon each edge of sheet E, between the angle-frames, are secured metal bars F. One-half of these bars project beyond the edges of the sheet to form seats for the bottom sheet or plate, G. The sheet E projects over the rear frame the thickness of the back plate, H, the outline of which corresponds with the outline of the rear angle-frame. After the frame is secured together the safe is filled through

the bottom opening with fire-proof cement. The bottom is then secured in place, and the casters, which have their upper parts made to conform to the rounded corners of the safe, are attached.

It will be seen that in my safe there are no joints for the filling to work through, as is the case in safes formed of the welded and paneled frames now in common use, and that the exterior being plain smooth surfaces, the safe is much easier finished.

By the means above described I am enabled to use a stronger outer plate without increasing the cost, and if additional strength is required an additional frame, similar to the front and back ones, may be placed centrally between them. Thus all danger of the sides or top bulging out by the filling expanding is entirely avoided.

Instead of the bottom plate, the ends of sheet E may be made to meet under the bottom of the safe. In this case the safe is
59¾ filled from the back, as is now done; but the form shown is much the best, as my safe can be completely finished before the filling is put in. The filling adds greatly to the weight. Much labor in handling is therefore saved.

It would be an inferior modification of my invention to bend the bar A so as to form the top and sides of the frame, and form the bottom by a separate straight angle-bar riveted to the inwardly-projecting sides.

I am aware that it has been proposed to make protecting corner-pieces for safes from angle-iron, from one side of which a triangular piece was cut out to permit the opposite side to bend.

The shape of the cut to permit the angle-bar to be bent to form rounded corners may be varied without departing from the principles of my invention, it only being essential that sufficient metal be cut away on one side of the angle-bar to permit the other or uncut side to be bent, the cut nearest the uncut side being in the form of a curve or curves, so that when said uncut side is bent to form the corner it will bear upon and be supported by the curved end or portion of the cut, and thus be rounded by a curve similar to the curve of the cut.

What I claim as new, and desire to secure by letters patent, is—

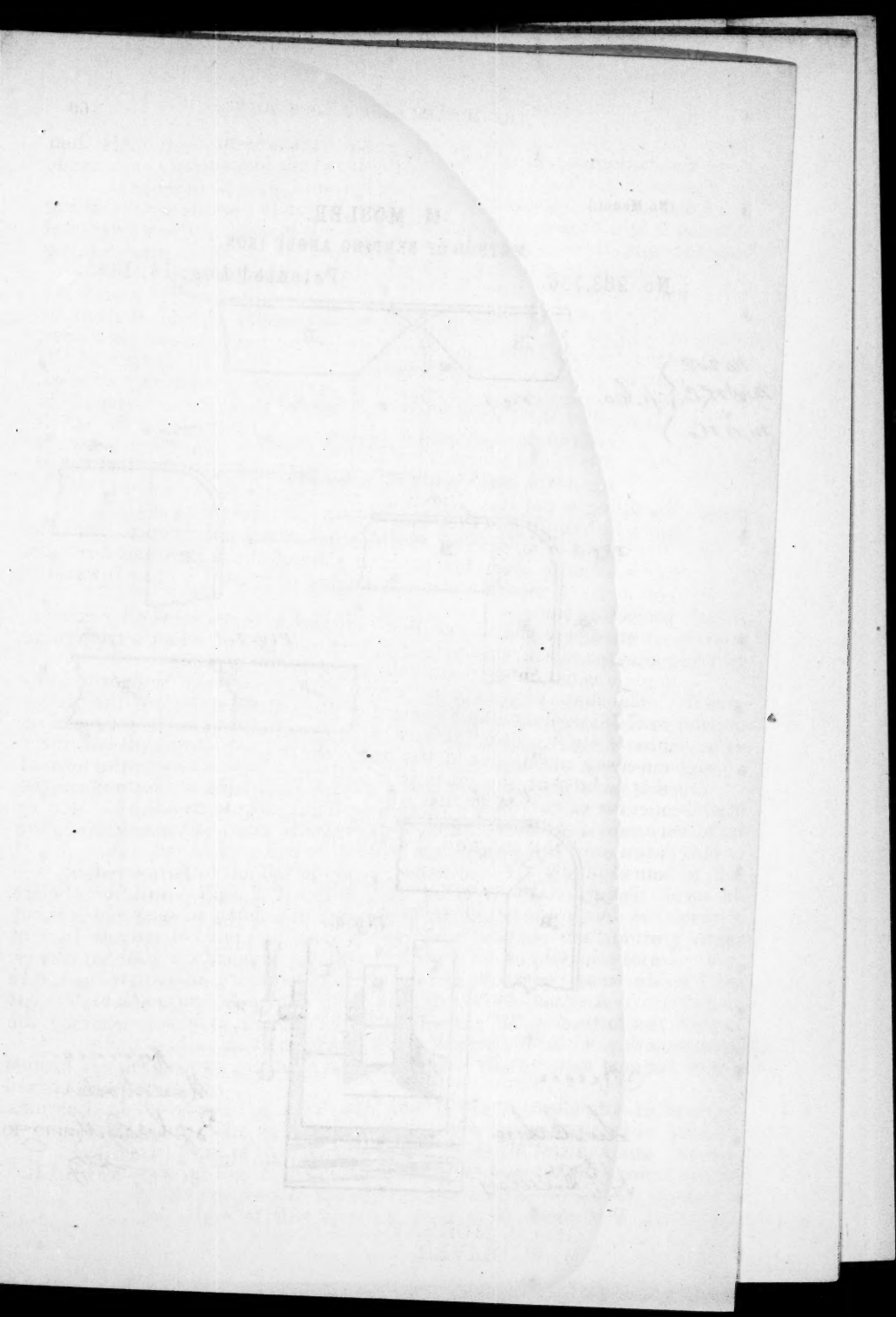
1. An angle-bar for safe-frames, consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, leaving a curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve to form a rounded corner.

2. An angle-bar for safe-frames, consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, with curved cuts meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners.

3. In a safe, the combination of the front and back frames, formed of single bent angle-bars having one side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet, E, bent around and secured to said frames to form the top and sides of the safe, substantially as described.

MOSES MOSLER.

Witnesses:
GEO. J. MURRAY.
M. W. OLIVER.



(No Model.)

M. MOSLER.

METHOD OF BENDING ANGLE IRON.

No. 283,136. Patented Aug. 14, 1883.

No. 248.
M. S. & L. Co.
vs.
M. B. & Co.
} p. 60.

Fig. 1.

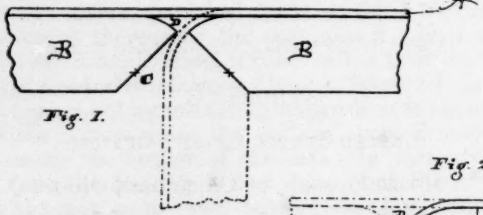


Fig. 2.

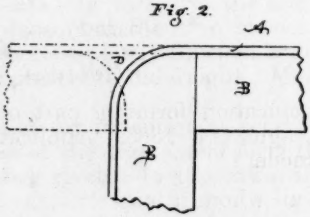


Fig. 3.

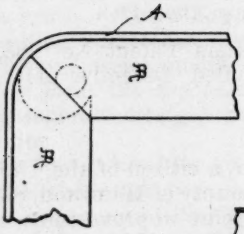


Fig. 5.

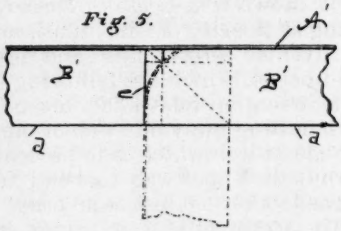


Fig. 4.

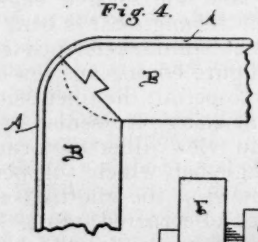
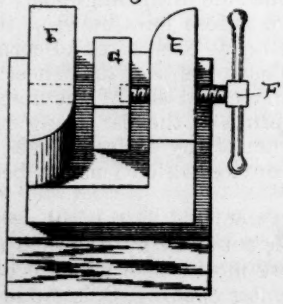


Fig. 6.



Witness:
Lee Cahen
H. G. Dickey

Inventor:
Moses Mosler
By Geo. J. Murray
Atty

60 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty four, came the said the complainant herein aforesaid, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibit "C," and which said Exhibit "C" so as aforesaid filed is clothed in the words and figures as follows, to wit:

(Here follows diagram marked p. 60.)

EXHIBIT "C."

60½ UNITED STATES PATENT OFFICE.

MOSES MOSLER, of Cincinnati, Ohio.

Method of Bending Angle-Iron.

Specification forming part of Letters Patent No. 283,136, dated August 14, 1883. Application filed December 11, 1882. (No model.)

To all whom it may concern:

Be it known that I, Moses Mosler, a citizen of the United States, residing at the city of Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in bending angle-irons, of which the following is a specification.

This invention relates to a means for bending angle-bars. It consists in cutting away one web of the angle-bar opposite that portion of the uncut web which is to be bent to form a round corner, so as to permit the uncut web to bend freely and the severed edges or portions to abut against each other when the angle-bar is bent.

In the accompanying drawings, in which similar reference-letters indicate like parts wherever they occur, figure 1 is a plan view of an angle-bar having one of its sides cut out to permit the uncut side to bend around the bar or corner, when bent being represented in dotted line. Figs. 2, 3, and 4 show in plan view different forms of openings or notches in one side of the angle-bar, which will permit the bar to bend and leave a close joint between the abutting edges as they are brought together to form a round cornered frame. Fig. 5 represents a templet of card-board or thin sheet metal which I use to determine about the shape and size of the notch or cut which it is necessary to make to admit of the bar being bent to any desired angle and to make a corner of any desired curve. Fig. 6 represents, in perspective, a simple device which I use to bend the bar to the desired shape.

A represents the uncut web, and B the cut web, of a right-angle angle-bar. The web B is cut away by a punching-tool of suitable shape in front of that portion of web A which is to be bent. As represented in Fig. 1, the outer opening, C, is made by lines at angles of forty-five degrees to the edge of the web, so that when the bar is bent the edges of this opening meet each other in a true miter.

The inner opening, D, which permits the bar to bend, has a dovetailed shape bounded by curved lines described from points upon the miter-line and the face of the uncut web A. The curved ends of the web B abut against the uncut side when the bar is bent, as represented in dotted line, Fig. 1, and in full line, Fig. 3, thus making a close joint.

Fig. 2 represents a corner formed by severing the web B with a cut, one edge of which is at right angles to the edge of the web, and the opposite edge by a circular cut, which is the same curve as the inner curve or corner, that portion of web B between these lines and web A cut away to permit the bar to bend, and the edge of web B upon side of the opening to be brought against the cut at right angles to edge upon the opposite side.

It is evident from an inspection of Figs. 3 and 4 that the shape of the opening or cut-away portions of web B may be varied at will, so long as the meeting line or lines be not extended beyond the space bounded by the rounded corner and the edge-lines extended to web A. The miter-line being taken as the central dividing-line, whatever shape is cut away from web B upon one side of this line the counterpart must be left upon that part of the web upon the other side. If, for instance, the small circular projection shown in dotted line, Fig. 3, be left upon one side of the miter-line, a corresponding circular opening must be cut out of the web upon the opposite side of the line in this case as well as in the form shown in full line, Fig. 4. The projecting piece must be bent back until the other parts are brought together, when it is driven into the opening and locks the bar firmly together. I have shown in dotted line, Fig. 4, another form of joint similar to the one shown in Fig. 3.

The templet shown in Fig. 5 is a thin sheet-metal or card-board angle-piece. One web of this I sever by a cut, *e*, at right angles to the edge *d* of one web. The two webs are severed at their junction for some distance upon each side of this line or cut *e*. Now, by bending the web B′ so that the cut edges will pass each other the templet may be bent around to any curve desired and to any angle, the corners of the severed web passing underneath the uncut side and one part of web B′ overlapping the other. When the templet is bent to the proper angle and the corner of the size desired, it is secured in position, while the web B′ is severed on a line with the inner curve of the corner, and another cut from the inner angle of the edges through the overlapping parts of the templet to any part of curved corner of web A′. When the templet is again straightened it will disclose the proper shape of opening or of the punch to cut out angle-bars of the same width as the pattern to be bent to the desired angle.

60¾

The angle-bars cut out as described may be bent to the proper form by the machine represented in Fig. 6. In this E represents a metal block having upwardly-projecting sides screw-tapped to receive clamping-screw F. The opposite corners of the block are rounded to fit the inner curve of the desired corner. G is a loose block of iron, between which and the side of block E the uncut web A is clamped by screw F, the other web, B, resting on the block, the cut-

away part over the rounded corner; by force applied to the projecting end of the bar it is bent around until the severed edges meet in a close joint.

The angle-bar herein shown is not claimed here, as it is the subject of a pending application.

What I claim herein, and desire to secure by letters patent, is—

The herein-described process of bending angle-irons, which consists in cutting away a portion of one web by a cut which severs the two webs at their junction for a distance equal to the arc of the corner to be bent, and removes sufficient of metal in front of the single part of the uncut web to permit the same to bend to the desired angle and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described.

MOSES MOSLER.

Witnesses:
GEO. J. MURRAY.
JOHN CRANE.

61 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said the complainant herein aforesaid, by its said solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibid "D," and which said Exhibit "D" so as aforesaid filed is clothed in the words and figures as follows, to wit:

62 EXHIBIT "D."

To all whom it may concern:

Be it known that I, Mos*ler* Mosler, of Cincinnati, county of Hamilton, State of Ohio, in consideration of one dollar and other good and valuable considerations to me in hand paid by the Mosler Safe and Lock Company, a corporation organized under the laws of the State — Ohio and having its place of business at Cincinnati, in said State, and the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over unto the said The Mosler Safe and Lock Company the entire right, title, and interest in and to the invention and letters patent of the United States No. 273,585, for an improvement in fire-proof safes, which were granted to me and which bear date March 6, 1883, and also the right to all back royalties or damages for the unlawful use of the invention covered by said letters patent, with the right to the said The Mosler Safe and Lock Company to sue for the same in its own name.

The whole of my said right, title, and interest in and to the said invention and letters patent to be held and enjoyed by the said The Mosler Safe and Lock Company for its own use and behoof and for the use and behoof of its assigns and legal representatives to the full end of the term for which the said letters patent are granted as fully and entirely as the same would have been held and
63 enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Cincinnati, Ohio, this 23d day of August, 1883.

(Signed) MOSES MOSLER. [SEAL.]

In presence of—
ALEXANDER HENDERSON.
GEO. J. MURRAY.

(Stamps endorsed:) Patent Office U. S. A., Aug. 30, 1883. Pat. Office. 18638. 3. Div. D. 1883.

Attached Receipt.

2–178.

Received for record Aug. 30, 1883, and recorded in Liber Y 29, page 79, of Transfer- of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[Patent Office, United States of America.]

(Signed) E. M. MARBLE,
Commissioner.

Ex'd: F. T. C.
(2864–20 M.)

And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord
64 one thousand eight hundred and eighty-four, came the said complainant aforesaid herein, by its said solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibit "E," and which said Exhibit "E" so as aforesaid filed is clothed in the words and figures as follows, to wit:

EXHIBIT "E."

To all whom it may concern:

Be it known that I, Moses Mosler, of Cincinnati, county of Hamilton, State of Ohio, in consideration of one dollar and other good and valuable considerations to me in hand paid by the The Mosler Safe and Lock Company, a corporation organized under the laws of Ohio and having its place of business at Cincinnati, in said State, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over unto the said The Mosler Safe and Lock Company the entire right, title, and interest in and to the invention and letters patent of the United States No. 281,640, for an improvement in fire-proof safes, which were granted to me and which bear date July 17th, 1883, and also the right to all back royalties or damages for the unlawful use of the invention covered by said letters patent, with the right to the said The Mosler Safe and Lock Company to sue for the same in its own name.

The whole of my said right, title, and interest in and to the said invention and letters patent to be held and enjoyed by the
65 said The Mosler Safe and Lock Company for its own use and behoof and for the use and behoof of its legal assigns and representatives to the full end of the term for which the said letters patent are granted as fully and as entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Cincinnati, Ohio, this 23d day of August, 1883.

(Signed) MOSES MOSLER. [SEAL.]

In presence of—
ALEXANDER HENDERSON.
GEO. J. MURRAY.

(Stamps endorsed:) Patent Office U. S. A., Aug. 30, 1883. Pat. Office. 18638. Div. D. 1883.

Attached Receipt.

(2–178.)

Received for record Aug. 30th, 1883, and recorded in Liber Y 29, page 80, of Transfer- of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[Patent Office, United States of America.]

E. M. MARBLE,
Commissioner.

Ex'd: F. T. C.
(2864–20 M.)

66 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said complainant herein aforesaid, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain Exhibit "F," and which said Exhibit "F" so as aforesaid filed is clothed in the words and figures as follows, to wit:

EXHIBIT "F."

To all whom it may concern:

Be it known that I, Moses Mosler, of Cincinnati, county of Hamilton, State of Ohio, in consideration of one dollar and other good and valuable considerations to me in hand paid by The Mosler Safe and Lock Company, a corporation organized under the laws of Ohio and having its place of business at Cincinnati, in said State, the receipt whereof is hereby acknowledge, have sold, assigned, transferred, and set over unto the said The Mosler Safe and Lock Com-

pany the entire right, title, and interest in and to the invention and letters patent of the United States No. 283,136, for an improvement in the method of bending angle irons, which were granted to me and which bear date August 14th, 1883, and also the right to all back royalties or damages for the unlawful use of the invention covered by said letters patent, with the right to the said The Mosler Safe and Lock Company to sue for the same in its own name.

67 The whole of my said right, title, and interest in and to the said invention and letters patent to be held and enjoyed by the said The Mosler Safe and Lock Company for its own use and behoof and for the use and behoof of its assigns and legal representatives to the full end of the term for which the said letters patent are granted as fully and entirely as the same would have been held and enjoyed by me had this agreement and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Cincinnati, Ohio, this 23d day of August, 1883.

(Signed) MOSES MOSLER. [SEAL.]

In presence of—
ALEXANDER HENDERSON.
GEO. J. MURRAY.

(Stamps endorsed:) Patent Office U. S. A., Aug. 30, 1883. Pat. Office. 18638. D. Div. D. 1883.

Attached Receipt.

2-178.

Received for record Aug. 30th, 1883, and recorded in Liber Y 29, page 81, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[Patent Office United States of America.]

(Signed) E. M. MARBLE,
Commissioner.

Ex'd: F. C. F.
(2864-20 M.)

68 And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said complainant herein aforesaid, by its said solicitor as aforesaid, and filed in the office of the clerk of the court aforesaid, in this cause, its certain Exhibit "H;" and which said Exhibit "H," so as aforesaid filed, is clothed in the words and figures as follows, to wit:

(2–175.)

EXHIBIT "H."

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed are true copies from the files of this office of certain papers in the matter of the interference between George J. H. Goehler and Moses Mosler for improvement in safes.

In testimony I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this eighth day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth.

[Patent Office United States of America.]

69 (Signed) E. M. MARBLE,
Commissioner.

(1181–10000.)

Redeclaration. Interference.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *October* 26, 1882.

[U. S. Patent Office, Oct. 30, 1882. Exr. of Interferences.]

Moses Mosler, care Chas. A. Neale, asso., present:

Please find below a copy of a communication from the examiner concerning your application for letters patent for an improvement in safes, filed Dec. 27th, 1881.

Very respectfully,

E. M. MARBLE,
Commissioner of Patents.

Room No. —.

Your case, above referred to, is adjudged to interfere with others, hereafter specified, and the question of priority will be determined in conformity with the rules. The statement demanded by rul' 105 must be sealed up and filed on or before the 23d day of Nov., 1882, with the subject of the invention and the name of the party filing it indorsed on the envelope.

The subject-matter involved in the inter'ence is:

70 1st. An angle bar for safe frames consisting of a right-angled iron bar, one of the sides of which is cut away, leaving a straight or curved cut facing the uncut side, whereby said uncut side may be bent to bear upon said cut side to form a rounded corner.

2d. An angle bar for safe frames, consisting of a right-angled iron bar, one of the sides of which is cut away with a straight or curved cut meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners.

3d. In a safe the combination of the front and back frames formed of single bent angle bars having one side cut away to leave straight or cut ends, upon which the uncut side is bent to form rounded corners, and a metal sheet bent around and secured to said frames to form the top and sides of the safe.

Substantially in the language of Mosler's 1st, 2d, and 3d claims, which interfere respectively with the subject-matter of the 1st, 2d, and 3d claims of Goehler.

Parties to the interference are:

George J. H. Goehler, Cincinnati, Ohio.
Chas. J. Gooch, present att'y.
No. 53140, filed Feb'y 20th, 1882, and
Moses Mosler, Cincinnati, Ohio.
Chas. A. Neale, present att'y.
No. 48793, filed Dec. 27, 1881.

71 Copies sent.

GOEHLER *vs.* GOSLER.

In re interference. Before the examiner of interferences.

Safes.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan'y 29th*, 1883.

Moses Mosler, care C. A. Neale, present:

Please find below a communication from the examiner of interferences in regard to the above-cited case.

Very respectfully,

(Sig.) E. M. MARBLE,
Commissioner of Patents.

Per stipulation, the times for taking testimony in this case are extended as follows:

Testimony-in-chief to close.
" " " " "
" " " " "

Goehler's testimony in rebuttal to close Feb'y 17, '83.
" " " "

Hearing M'ch 9, '83.

GOEHLER *vs.* MOSLER.

In re interference. Before the examiner of interferences.

Subject-matter: Safes.

72 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C. *April 5th*, 1883.

Moses Mosler, care C. A. Neale, present:

Please find below a communication from the examiner in charge of interferences in regard to the above-cited case.

An appeal may be taken from the decision of the examiner within 20 days. (See section 42 of the act of July 8, 1870.)

Very respectfully,

(Sig.) E. M. MARBLE,
Commissioner of Patents.

In the matter of the interference above referred to, upon which a hearing was appointed for the 9th day of M'ch, 1883, the question of priority has been decided in favor of Mosler.

(Copies of the decision will — furnished by the office at the usual rates.)

73 IN U. S. PATENT OFFICE.

GOEHLER *vs.* MOSLER.

Before the examiner of interferences.

Goehler application filed February 20, 1882.

Mosler application filed December 22, 1881.

The issue involved in this interference is:

"An angle bar one of whose sides is cut away with a cut having straight or curved edges substantially at right angles, said cut meeting an angular cut, whereby the uncut side may be bent to bear upon the cut side to form a rounded corner."

The question for solution in this case is, Who is the true inventor? for it is very clear that there is only one original inventor.

Mosler is a manufacturer of safes, and at the time of the making of this invention Goehler was his employee.

About the fourth of November, 1881, it is clearly shown that an angle bar embodying this invention was made in Mosler's manufactory. This bar was made by Goehler, with the aid of one Thorworth, another employee in the same establishment.

Goehler gave the necessary instructions to Thorworth. Goehler testifies that he originated the idea. A number of persons were shown the invention by Goehler, but not one testifies as to
74 any declaration of ownership on his part.

It is in evidence that on a certain occasion, when a bar was being bent on the plan of the invention, Mosler asked, "Whose 'get up' is

this?" and Hemler, his superintendent, answered, "It had to be so," and afterward Goehler complained of the injustice done him by Hemler.

But this is a very vague and unsatisfactory assertion of right. It is not at all clear what Goehler considered was the injustice done him. It may be that he thought that Hemler meant to belittle his skill as a workman, and this explanation is most consistent with his subsequent conduct and with the other facts in the case. It being admitted that Goehler, on the fourth of November, 1881, bent an angle bar according to this invention, the simple question remaining to be answered is, Did he originate the plan or was it in substance communicated to him?

From what has been before said it is manifest that his claim to originality rests entirely upon his own testimony. What, then, is the evidence upon the other side?

There is a good deal of evidence as to the construction of several safes with angle bars like Hemler's Exhibit No. 2 in the month of October, but on this point there is much conflict, and it will
75 not be determined, as the case can be determined more satisfactorily on the alleged instructions given to Goehler.

Mosler testifies that he explained this invention to Hemler some months anterior to November 4, 1881, and directed him to have it carried out. He also asserts that he disclosed it to his two brothers, Max and Julius Mosler.

Hemler and Julius Mosler testify that Moses Mosler did disclose and explain to them at this time this invention; but while Max Mosler remembered that his brother Moses explained a manner of bending angle bars in a cold state to form a round corner for safes, yet this does not identify this explanation with the invention in issue.

However, Hemler and Julius Mosler corroborated Moses Mosler as to the latter's disclosure to them some time prior to Goehler's alleged discovery. Next, Hemler swears that he explained to Goehler the invention derived from Moses Mosler, and instructed him to put it into practice, which the latter did about November 4, 1881.

It may be now stated that though Moses Mosler explained the plan of the invention to Hemler, yet the latter modified it somewhat in giving it to Goehler, and, again, the last-mentioned in carrying the idea into practice still further modified it.

76 Yet the substance of the invention came from Moses Mosler, and the variations were simply such as good judgment would dictate.

It seems that Mosler recognized that a slight alteration had been made, and, when viewing the angle bar as bent by Goehler, asked whose "get up" it was; and this question very probably first suggested to Goehler that he had any claim, for we find him afterward complaining that Hemler did not give him due credit for his efforts. Mosler told him that justice would be done him, and when he was about to make application for a patent requested Goehler to accompany him; but upon consulting his attorney he was informed that the alteration made by Goehler did not depart from the original

idea, and did not entitle him to lay claim as an inventor, and Goehler was so informed.

Shortly thereafter Goehler was offered inducements to leave Mosler's employ and work for a rival company. When Mosler heard of it he feared that the new invention would be practiced by his rivals and wished Hemler and Goehler to sign a paper admitting that they had no right to the invention, but simply acted as mechanics in carrying out his, Mosler's, idea. This Hemler immediately did, but Goehler at first refused to do so. Subsequently, however, Goehler signed it also, and the paper is now introduced as an
77 exhibit into this case.

A written admission of this kind is strong evidence, but it is not conclusive. It is incumbent upon the party signing such a paper to clearly show a mistake or misunderstanding as to its contents if he wishes to avoid its force as an admission. Goehler has given half a dozen or more different explanations of his understanding as to the contents of the paper, but not only are they unsatisfactory, but frivolous.

It is in evidence that it was read to him in both German and English, and that he fully understood its nature. There are several witnesses on this point against Goehler's unsupported statement; but even if this were not so, Goehler's explanations are not sufficient to overcome his written admission.

Two witnesses are called for the purpose of impeaching the credit of Hemler. One Hall, who was introduced for this purpose, testifies that he does not know Hemler's general reputation for truth and veracity. Hence all further testimony bearing on particular facts, and the opinion the witness had derived therefrom, is incompetent.

Berkmyer gives only his own opinion as to Hemler's veracity, and nowhere states what is generally said of him. The credit of Hemler is not regarded as affected by the impeaching testimony.

78 Moses Mosler must be adjudged to be the true inventor.

(Signed) J. B. CHURCH,
Examiner.

(Signed) FRANK T. BROWN,
Ass't Examiner.

April 5, 1883.
Ex'd: A. M.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *April 23d*, 1883.

Moses Mosler, care Charles A. Neale, att'y, present:

SIR: The appeal from the decision of the examiner of interferences in the case of Goehler *vs.* Mosler, subject-matter "safes," will be heard by the examiner-in-chief at 1 p. m. on Thursday, May 10, 1883.

Very respectfully,

(S'g.) E. M. MARBLE,
Commissioner of Patents.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *May* 25, 1883.

79 Moses Mosler, care Charles A. Neal, att'y, present:

SIR: You are hereby informed that the case of interference between Goehler *vs.* Mosler, subject-matter "safes," has been heard by the examiners-in-chief on appeal, and the decision of the examiner in charge of interferences is affirmed and the question of priority of invention is decided in favor of Moses Mosler.

An appeal may be taken from this decision within thirty days from the date of this notice.

Copies of this decision will be furnished at the usual rates.

Very respectfully,

(Sig.) E. M. MARBLE,
Commissioner of Patents.

No. 7896.

Before the examiner-in-chief on appeal.

In the Matter of the Interference between the Application of GEORGE J. H. GOEHLER, filed February 20, 1882, and the application of MOSES MOSLER (Case C), filed December 22, 1881.

U. S. PATENT OFFICE, *May* 25, 1883.

80 *Improvements in Safes.*

The subject-matter *matter* of this interference is a round corner of a safe constructed from an angle bar cut and bent in a specific manner.

The issue is as follows:

"An angle bar, one of whose sides is cut away, with a cut having straight or curved edges substantially at right angles, said cut meeting an angular cut, whereby the uncut side may be bent to bear upon the uncut side to form a rounded corner."

The parties to this interference at the time of the making of the invention in controversy sustained the relation of employer and employee, and the matter at issue between them is, Who is the real and true inventor thereof?

There is no dispute as to the fact that about the 4th of November, 1881, the practical embodiment of the invention was made by Goehler with the assistance — Thorwarth, at the shop of the Mosler Safe and Lock Company, at Cincinnati, Ohio, but Goehler contends that he also invented it, while it is contended by Mosler that he originated the idea and gave instructions to his superintendent, Hemler, to have it put into form, and that Goehler, in producing the device, was simply acting in accordance with the instruc-

81 tions received by him from Hemler.

In this view we think Mosler is fully sustained by the evidence.

Goehler's claim to the invention rests entirely upon his own unsupported testimony. His witnesses establish the fact that he and Thorwarth actually cut and bent the angle bar, but not one of them testifies to any fact showing that Goehler ever made any claim to have invented it, or that he was anything more than a mere instrument to carry out his employer's ideas.

On the other hand, Mosler fixes his conception previous to his sailing for Europe in January, 1881, and states that he explained the invention to Hemler. After his return, some time in June, he again spoke to Hemler about it, and directed him to put it into practical form.

Hemler says he gave instructions to Goehler in pursuanee of the directions received from Mosler, and though this is denied by Goehler, and is not testified to by other witnesses, it is more in accordance with the established facts than is Goehler's also unsupported statement that he never received any such directions or ever knew that the Moslers desired to make a round-cornered safe with bent angle-bar frames.

Julius Mosler agrees with Hemler that his brother Moses
82 disclosed the invention to him after his return from Europe.
He is not sure as to the exact date, but fixes it several months before Goehler's date of conception.

There is more testimony in the case designed to show that Mosler acknowledged he was not the inventor of the device finally produced, but it is all based upon a question by Mosler when he saw it, as to whose production it was, and is not sufficient for the purpose for which it is introduced. At best it only indicates that Mosler, recognizing the fact that there was a difference in details of construction, though not in principle, thought, perhaps, the producer of the device might have some claim to be an inventor.

His subsequent course shows this, for when he was about to make application for a patent he (as Goehler himself testifies) told Goehler he wanted him to go to his attorney's office with him, as "he did not want to swear at random." Having subsequently, however, had an interview with his attorney, Mosler's doubts seem to have been removed, and he told Goehler that it was not necessary for him to be present.

In addition to the testimony of the witnesses on behalf of Mosler, there is in evidence a written admission of Goehler (joined by Hem-
ler) that he is not the inventor of the devise in question, but
83 that it was construced under Mosler's supervision and in accordance with his instructions.

Goehler endeavors to show that he did not understand the purport of this paper, and to explain what he thought it did mean; but it is in evidence that the paper was read to him in both German and English, that he understood both languages, and that he was the correspondent for and had been the editor of a newspaper. He was, therefore, a man of intelligence, and it is hard to believe that the explanation he gives as to his understanding of the paper is the correct one.

It is not necessary to advert to the attempt to impeach Hemler's character for truth and veracity further than to say it is not considered successful.

The decision of the examiner of interferences is affirmed.

(Signed) ROBERT J. FISHER, JR.,
R. L. B. CLARKE,
U. M. BATES,
Ex'd: A. U. *Examiners-in-Chief.*

84 And afterward, but on the same day as aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said the complainant herein as aforesaid, by its said solicitor as aforesaid, and filed in the said the office of the clerk of the court as aforesaid in this cause its certain Exhibit "I," and which said Exhibit "I" so as aforesaid filed, is clothed in the words and figures as follows, to wit:

EXHIBIT "I."

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of the specification, petition, oath, and drawing, as originally filed in the matter of the application of George J. H Goehler, filed February 20th, 1882, for improvement in bending angle irons for safes, &c., which was in interference with the application of Moses Mosler, filed December 27th, 1881, for fire-proof safes, and decided in favor of said Mosler April 5th, 1883.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 24th day of October, in the year of our Lord one thousand eight hun-
85 dred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[Patent Office, United States of America.]

(Signed) E. M. MARBLE,
Commissioner of Patents.

Petition.

To the Commissioner of Patents:

Your petitioner, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton, State of Ohio, prays that letters patent may be granted to the Mosler, Bahmann & Co., of the same place, for the improvement in bending angle irons for safes, &c., as set forth in the annexed specification.

And he hereby appoints James H. Layman, of Cincinnati, Ohio, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, to sign the drawings, and to transact all business in the Patent Office connected therewith.

Signed at Cincinnati, Ohio, this 14th day of February, 1882.
GEORGE J. H. GOEHLER.

(Endorsed:) U. S. Patent Office, Feb. 20, 1882.

86 *Specification.*

To all whom it may concern:

Be it known that I, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton and State of Ohio, have invented certain new and useful improvements in rending angle irons for safes, &c., &c., of which the following is a specification.

The object of my invention is to bend angle irons for safes, bridges, jails, and other metallic structures, so as to afford neat and perfectly secure rounded corners and without being compelled to heat or weld the bar.

This result is accomplished by so cutting or notching one of the webs of the iron as to permit the other web being readily bent to the desired degree of curvature, which bending operation draws the edges of said notch or angular opening in close proximity with each other, so as to afford a mitered joint for the cut web, as hereinafter more fully described, and pointed out in the claims.

In the annexed drawing—

Fig. 1 is a *prospective* view of an angle bar, which is to be bent at the place indicated by the dotted line Z Z.

Fig. 2 is a similar view of the bar, but showing the appropriate web cut or notched preparatory to being bent.

Fig. 3 is a plan of the bent bar.

87 Fig. 4 is a plan of the under side of the same.

The angle bar or stiffener, which may be composed of either iron, steel, or other metal or compositions of metals, is made with two webs, A B, of any desired angle, shape, and strength of material.

It being desired to bend this bar at the line Z Z, seen in Fig. 1, and without being compelled to either heat or weld the iron, I proceed as follows:

The step consists in cutting or punching or otherwise removing sufficient of the metal from the web B to form a cove, C, the opposite sides of which, *c c*, are of such an angle as to insure an accurate mitre joint when the bar is finally bent.

This cove does not extend the entire width of the web B, but develops into an approximately triangular opening, D, the base of which is flush or in line with the inner face of the upper web A.

The angular sides *d d* of this opening join the sides *c c* of the cove, thus affording a contraction or waist, E, and causing these two communicating members C E to have a dovetailed shape. This dovetailed opening having been properly formed the cold bar is then bent with suitable appliances until the edges *c c* of the cove meet and form a perfect mitre joint, C, as seen in Figs. three and four.

88 As a result of this proceeding the web A has a rounded and symmetrical corner formed on it at *a*, as represented in Figs. 3 and 4.

It is evident that as the contraction or waist E closes up while the side *c c* of the cove are approaching each other, the sides *d d* of the angular opening D must be forced toward and finally impinge against the inner face of web A.

Consequently these sides *d d* act as bearers or abutments to prevent an inward bending or buckling of said web, and compel the bar to curve or bow outwardly.

The iron represented in Figs. 3 and 4 reveals the joint C, and also renders perfectly clear how the metal at the bend is compressed firmly against the sides *d d*.

Finally, my invention, although designed more especially for safes, is not to be confined to this use alone, but may be employed in the construction of bridges, jails, and other metallic structures.

Claims.

I claim as my invention :

1. The within-described process of bending angle irons, which process consists in providing one of the webs of the bar with an *with an* inwardly-converging notch or cove communicating with a
89 smaller opening having shoulders that serve as abutments, against which the other or uncut web is brought to bear, so as to be bent as herein described, the angular sides of the cove gradually approaching each other and forming a mitre joint at the junction of said cut web when the operation is finished, as set forth.

2. An angle iron having one of its web*bs*, B, coved or notched at C *c c*, D *d d*, E, and the other web A bent so as to afford a rounded corner, *a*, as and for the purpose described.

In testimony of which invention I hereunto set my hand.

GEORGE J. H. GOEHLER.

Witnesses :
JAMES H. LAYMAN.
J. C. HINTZ.

(Here follows diagram marked p. 90.)

Oath.

STATE OF OHIO, *Hamilton County,* } ss :

George J. H. Goehler, the above-named petition-, a citizen of the United States, and resident of Cincinnati, in the county of Hamilton, and State of Ohio, being duly sworn, deposes and say- that he verily believes himself to be the original, first, and sole inventor of the improvements in bending angle irons for safes, &c., &c., described in the foregoing specification ; that he does not know and does not believe that the — was ever before know- or used ; that the
91 same has not been patented to him nor to others, with his knowledge or consent, in any country, and that the same has

not to his knowledge been in public use or on sale in the United States for more than two years prior to this application.

GEORGE J. H. GOEHLER.

Sworn to and subscribed before me this 14th day of February, 1882.

[L. S.] DAN'L KELLY,
Notary Public in & for Hamilton Co., Ohio.

Ex'd; C. F.
E. L. S.

And afterward, but on the same day as last aforesaid, to wit, on the said the twentieth day of March, in the year of our Lord one thousand eight hundred and eighty four, came the said respondent herein as aforesaid, by its said solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause the certain record of Goehler's interference proceedings, and which said record so as aforesaid filed is clothed in the words and figures as follows, to wit:

92 *Record Goehler Interference.*

Chas. J. Gooch, solicitor of patents, Washington, D. C.

Interference.

In the Matter of the Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Improvement in Safes, now pending before the Commissioner of Patents.

C. A. Neale, Esq., attorney for Moses Mosler.

SIR: You are hereby notified that on Monday, the 11th day of December, 1882, at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, at nine o'clock a. m., I shall proceed to take the testimony of George J. H. Goehler, J. C. Hintz, John Hartley, George Therwarth, Herman Schmidt, August Schultz, and Charles Buffler, all of Cincinnati, Ohio, and of Henry Kech and Leopold Moritz, of Newport, Kentucky, and of Louis Gerve, of Covington, Kentucky, as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

GEORGE J. H. GOEHLER,
By his attorney, CHAS. J. GOOCH.

Service acknowledged this 7th day of December, 1882.

C. A. NEALE,
Attorney for Mosler.

93 GEORGE H. GOEHLER *vs.* MOSES MOSLER.

Before the Commissioner of Patents.

In the Matter of the Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Patent for Improvements in Safes.

Depositions of witnesses examined on behalf of George J. H. Goehler, pursuant to the annexed notice at the office of James H. Moore, No. 53 Pike's building, Cincinnati, Ohio, on Monday, December 11, 1882.

Present on behalf of George J. H. Goehler, J. H. Moore, and George Murray on behalf of Moses Mosler.

HENRY KECH, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. Do you speak English sufficiently well to answer the questions that may be put to you?

94 A. 1. I don't know, but I speak English only so as to answer the purposes of my business, but I don't believe I can answer the questions that come up by law.

Whereupon Julius Walther is introduced for the purpose of interpreting the witness' testimony, and is first duly sworn to faithfully, honestly, and impartially interpret the questions and answers that he may be called upon to interpret in this case.

Question to interpreter: Are you a relative of either of the parties to this suit, or are you interested in any way in the subject of the controversy?

A. I am not.

Q. 2. State your name, age, residence, occupation, in whose employ you now are, and how long you have been thus employed.

A. 2. My name is Henry Kech; I am 38 years old; I reside in Newport, Kentucky; I am a blacksmith, and I am now with Mosler Safe & Lock Company, and I am employed there about two years.

Q. 3. State what you know with reference to the getting up or inventing of a mode of cutting and bending angle irons for the purpose of constructing safes with round corners. State who first got up such mode of cutting and bending, and when it was as near as you can tell.

Objection by George Murray.

(That part of the question that assumes that he knows who was first to get up and invent angle irons as described is objected to.)

A. 3. Last month about a year ago it was that I heard talking about a round-cornered safe, and about a month afterward I seen it practiced—that is, to make a pattern, and all at once I saw it bent, and that man who bent it was Goehler. Until I noticed it first of course the main work was done. I also seen Goehler have a drawing before him.

95 Q. 4. When did you see this drawing? Was it before the first angle iron that you know of being bent?

A. 4. That I cannot answer.

Q. 5. Did you know of an angle iron being bent at about that time, and who bent it?

A. 5. The first I have seen bent was bent by Goehler by experiment.

Q. 6. Did you see the drawing before that experiment or after it?

A. 6. That I cannot tell; it is too long ago.

Q. 7. Describe the drawing that you saw.

A. 7. It was about this colored paper that I have seen (showing a piece of drawing paper on the table); it was a drawing like this, but not a full drawing. I saw only these lines. I saw only outlines; no shading like this.

Q. 8. When you say these lines do you mean the lines that are lettered? And describe, with reference to the letters, which lines were on it.

A. 8. I only saw these lines—three lines—"*a*," "*b*," and "*d*;" the lines "*a*" "*b*" is in each instance one line, as I understand it.

Q. 9. Who showed you this drawing?

A. 9. Nobody showed it to me; I came there accidentally.

Q. 10. Who had the drawing in his possession when you came there?

A. 10. Goehler had the drawing right in front of him, on the table.

(Counsel for Goehler herewith offers in evidence the drawing referred to, marked Goehler Exhibit No. 1.)

Q. 11. Did you see about that time a piece of paper cut out like the drawing on the exhibit; if so, in whose possession was it?

Objection by George Murray.

(Question objected to as leading and suggesting.)

A. 11. No.

96 Q. 12. When you saw the drawing lying in front of Goehler did any person explain to you what it was; if so, who?

A. 12. I had no opportunity to talk.

Q. 13. Did you know then what it was a drawing of?

A. 13. I thought it must be for the purpose of these angle irons.

Q. 14. Why did you think it must be for the purpose of these angle irons? Had you ever seen an angle iron or the drawing of — angle iron like that before?

A. 14. Because I understand drawings, and I knew what was going on in the shop.

Q. 15. What was going on in the shop that you knew of?

A. 15. They used to make square-cornered safes before, and because I heard talking about round-cornered safes.

Q. 16. Who did you hear talking about round-cornered safes?

A. 16. I heard Goehler talking about it.

Q. 17. How long after you saw that drawing was it before a safe was made in the shop having angle irons cut like the drawing and bent?

A. 17. I can't tell exactly the time, but I believe it was about a month or so after.

Q. 18. How long was it after you saw the drawing until you saw a piece of angle iron cut as shown in the drawing?

A. 18. I cannot state the time definitely.

Q. 19. I want your best recollection of it—whether it was hours, days, or weeks?

A. 19. I cannot remember.

Q. 20. Did you ever see an angle iron cut after the plan shown in the drawing; if so, who cut it or who had charge of cutting it and was it made into a safe?

97 A. 20. I have seen an angle iron bent after the drawing. The first I have seen was bent by Goehler and this was used for an experiment and not for a safe.

Q. 21. Was that experiment before you saw the drawing or afterward?

A. 21. I don't know.

Q. 22. After that experiment did you see any other angle irons cut like the drawing and bent and made into a safe?

A. 22. Yes.

Q. 23. How long after the experiment?

A. 23. I cannot state the time accurately; about one month or so.

Q. 24. That experiment, was the iron heated before it was bent or not?

A. 24. No.

Q. 25. Was the experiment a success?

A. 25. At first it was not complete; subject to alterations.

Q. 26. What was incomplete; what was the matter with it?

A. 26. The width (referring to the exhibit) from "*a*" to "*a*" was not correct.

Q. 27. How did you know that; did any person tell you; if so, who?

A. 27. Nobody said anything to me; I seen it myself; it didn't fit.

Q. 28. Did Goehler try to bend, the day before that, a couple of pieces cut out a little different—that is, with the lines "*a*" shown on the drawing continuing up to "*d*?"

Objection by George Murray.

(Question objected to as leading and for the further reason that the witness has testified to but one experiment.)

A. 28. I cannot remember.

Q. 29. After the experiment that you say was not correct did you know of any other iron being bent very soon in the same way; if so, by whom?

98 A. 29. After that time experiments were always made, but a machinist was always present with Goehler and also Hemler after that.

Cross-examination by GEORGE MURRAY:

X Q. 30. What part of the shop was it that you saw this angle iron bent and the drawing you saw?

A. 30. I saw the drawing in Goehler's office in the shop, and I saw the angle bent in the blacksmith shop.

X Q. 31. Where was Goehler's office in the shop; did he have one?

A. 31. There was a room in the south part, on the second floor, generally called the foreman's office; after that they removed the office; it is now in another part.

X Q. 32. Who was present the first time you saw it, and what was your business in the office?

A. 32. I accidentally came in to see Goehler about some work.

X Q. 33. How long before you saw this drawing had you heard talk in the shop about round-cornered safes?

A. 33. I don't know.

X Q. 34. About how long, as near as you can tell?

A. 34. I can't tell.

X Q. 35. Do you know that it was before you saw the drawing that you had heard talk about round-cornered safes?

A. 35. I have heard them speak about them; I can't remember whether that was before I saw the drawing.

X Q. 36. Didn't you see a round-cornered safe in the factory of the Mosler Safe & Lock Company before you saw that drawing?

A. 36. I have not seen these kind of safes in the factory before I saw the drawing, but I have seen other kinds, what they called "express boxes."

99 X Q. 37. You saw no round-cornered safe, then, prior to that time?

A. 37. I cannot remember.

X Q. 38. Had you bent any angle bars with round corners before you saw that drawing similar to that?

A. 38. I don't remember, except those "express boxes."

X Q. 39. The first experimental angle iron you say was incomplete; what did it require to make it complete?

A. 39. That I do not know; they took it away.

X Q. 40. Who took it away?

A. 40. Goehler.

X Q. 41. What was Goehler's position in the shop? What did he do there?

A. 41. He was foreman.

X Q. 42. Was any one over him in the shop?

A. 42. The superintendent.

X Q. 43. From whom did you receive your orders—the superintendent or Goehler? You may give the superintendent's name.

A. 43. Sometimes I got orders from the superintendent, sometimes from the foreman. Michael Hemler is the name of the superintendent.

X Q. 44. Has Mr. Goehler offered you a position with Mosler, Bah-

man & Co. recently at an increase of salary over what you have been getting with the Mosler Safe & Lock Company?

A. 44. Yes, sir.

Re-examination by JAMES H. MOORE:

Q. 45. How long is it since Mr. Goehler first made you this offer or promise?

A. 45. Three or four weeks ago; I do not know exactly.

100 Q. 46. Are you quite sure that three or four weeks ago was the first time that you and Goehler had conversation with reference to your getting work at Mosler, Bahman & Co.'s?

A. 46. That was the second time; the first time I answered, I don't move if I don't get more wages.

Q. 47. Did Mr. Goehler offer you the first time more wages?

A. 47. No, sir.

Q. 48. Did you tell him at that first time that you wouldn't go if you got more wages?

A. 48. I said that I would not leave unless I received more wages.

Q. 49. The last time he saw you about it how much more wages did he offer you than you were then getting?

A. 49. He did not offer me more wages the last time; I made the offer myself. He only asked me how much I wanted.

Q. 50. And what did you say you wanted?

A. 50. That don't belong here; it is a money matter, and I don't want to answer it.

Q. 51. Did Mr. Goehler accept your offer at the sum you named?

A. 51. Yes, sir.

Q. 52. Then why didn't you go to work at that time for Mosler, Bahman & Co.?

A. 52. That doesn't belong here. (The notary instructed the witness that he must answer the question, and witness answered thereupon.) Because it suited me better where I was working.

Q. 53. Isn't it a fact that the Mosler Safe & Lock Co. afterward paid you higher wages than Goehler offered you?

A. 53. Yes.

101 Q. 54. When Mr. Goehler wanted you to work for Mosler, Bahman & Co. wasn't it because you were the best blacksmith in Cincinnati for the purpose that they wanted you?

A. 54. He said he wanted a good blacksmith for certain work, if I wouldn't want to work for him.

Recross-examination.

X Q. 55. What was the certain kind of work he wanted you for?

A. 55. Angle-iron work.

HENRY KECH.

AUGUST SCHULTZE, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, occupation, in whose employ you now are, and how long you have thus been employed.

A. 1. My name is August Schultze; age, 30 years; I reside 107

Twelfth street, Cincinnati, Ohio, and I am now in employ of Mosler Safe & Lock Company, and have been in their employ last time about six months, and about three years at another time before that.

Adjournment by consent until 1½ o'clock p. m. to-day.

Q. 2. When did you first go to work for the Mosler Safe & Lock Company, when did you quit their employ, and when did you again go to work for them?

A. 2. About four years ago I first went to work for them, quit, to my best knowledge, on 19th of November, 1881; started to work for them again some time in June, 1882.

Q. 3. State what you know, if anything, with reference to who first invented the mode of cutting angle irons, shown to you in Goehler Exhibit No. 1, for the purpose of making safes with rounded corners.

102 A. 3. I have seen the mode of making this shape of angle iron fourteen days to three weeks before I quit the Mosler Safe & Lock Company; the mode was shown to me in shape of a cut in the hands of Mr. Goehler; he showed it to me, telling me that he thought he had it now the way they were going to make the safes.

Q. 4. Please take a piece of paper and reproduce, if you can, or as nearly as you can—make a copy of that cut.

A. 4. This which I herewith offer in evidence, marked Goehler Exhibit No. 2, about represents what I seen, but is not cut as close as I saw, but is as good as I can make it.

Q. 5. You say that this is not cut as close as what you saw. I want to know particularly wherein it differs. I have marked three letters "*a*," "*c*," "*b*;" you will observe that when I bend the piece that the line marked "*a*" stands at a distance from and does not come in contact with the lines marked "*c*" "*b*." Please explain with reference to the exhibit how the cut that you saw compares with the exhibit in this particular.

A. 5. By bending this around in a square line "*c*" and "*b*" want to come close together and form a joint, and if I cut out too much they won't join together, and if I don't cut enough I can't get it in square. The original was stiffer paper, and line "*a*" would close up against "*c*" "*b*" if it were cut properly.

Q. 6. As I understand you, the cut exhibited to you by Mr. Goehler, when bent, the line "*a*" in it would have come in close contact with the line formed by "*c*" "*b*?"

A. 6. Yes, sir.

Q. 7. What did Mr. Goehler say in addition when he exhibited the cut to you?

A. 7. He said he thought he had it now.

Q. 8. Did you bend up the cut so as to see whether it would work?

A. 8. No, sir.

Q. 9. Did Mr. Goehler bend it for you?

A. 9. Yes, sir; showed me also how it worked.

103 Q. 10. Did you have any subsequent conversation about that time about it; and, if so, what did Mr. Goehler say?

A. 10. We spoke about it two or three days afterward. He told me that, *to* his opinion, the superintendent, Mr. Hemler, didn't treat him right. He made one angle iron and showed it to one of his employers. They requested him to make another in their presence; one of the employers requested this; I don't know who it was, and in their presence Goehler bent one, and they, either one of the Moslers, asked whose invention it was. Mr. Hemler answered, "It had to be that way." In the evening when he went home he met one of the Messrs. Mosler and stated his complaint. They answered him he shouldn't be angry about it, as they would make it all right with him.

Q. 11. Did you about that time see an angle iron cut or bent or while it was being cut or bent after the manner exhibited in Goehler Exhibit No. 1? If so, state when it was and all that you know about it.

A. 11. I did not see any cut or bent; I saw one filed.

Q. 12. Describe this one that you saw filed, and state all you know about it and when it was made.

A. 12. About three weeks before I left I saw the tool-maker sawing out an angle iron like the drawing before me here—Goehler Exhibit No. 1.

Q. 13. Were any safes made before you left at that time, to your knowledge, upon angle irons cut as shown by the Exhibit Goehler No. 1?

A. 13. I saw two or three made like this cut—I mean safes.

Q. 14. Were those safes or either of them completed before you left?

A. 14. I don't know.

Q. 15. How many such angle irons, if you know, did the first of such safes made have?

A. 15. One.

104 Q. 16. Were you familiar with the round-cornered safes made at the Mosler safe & lock factory prior to Mr. Goehler's invention, as shown by Goehler Exhibit No. 1?

A. 16. Yes, sir.

Q. 17. Please look at the model now shown to you and say how the construction of those safes compared with it.

A. 17. The model is just like the way we made them.

Said model is herewith offered in evidence, marked Model Mosler Round-Cornered Safe No. 1.

Q. 18. Could you tell from examination of a round-cornered safe when finished whether it was made in accordance with the plan shown in the model or a bent angle iron, according to the Goehler invention?

A. 18. I would not undertake to say yes.

Q. 19. Is it possible that a round-cornered safe could have been made in that factory prior to the time that Goehler showed you the cut upon angle irons, such as shown in Goehler Exhibit No. 1, without your knowing of it?

A. 19. It is possible; but I don't believe such a one has been made.

(The last part of the answer is objected to as being swift and uncalled for by the question.)

Q. 20. Who do all of the hands in the shop say, if any one, *who* is the inventor of the round-cornered safe made upon angle irons, such as shown in Goehler Exhibit No. 1?

(Objected to as assuming that the witness knows what the hands say or that the hands know anything about the invention by George Murray.)

A. 20. I don't speak in the shop about that matter at all.

Q. 21. Why do you not speak about that to the other hands?

A. 21. There are too many hands working in the shop.

105 Q. 22. Did you ever speak to any of the hands other than Goehler about who made the invention, or did any of them speak to you; if so, about how many?

A. 22. No, sir.

Cross-examination:

X Q. 23. When Goehler said to you that he thought he had it now, the way they were going to make the safes, did you understand that this invention had been previously spoken about or experimented upon?

A. 23. I knew that the firm—I guess I don't know—was experimenting upon it in the blacksmith shop; I didn't say firm, it was Goehler showed it to me; whether he was experimenting for the firm I don't know.

X Q. 24. How long was that, that you saw the experimenting, before Goehler showed you the cut like Exhibit No. 2?

A. 24. Why, I seen the cut first, and then the experimenting.

X Q. 25. Did you know the firm wanted to make safes of that kind?

A. 25. Yes, sir.

X Q. 26. When did you first hear of their wanting to make safes of that kind?

A. 26. About a month before I seen the cut from Goehler.

X Q. 27. Suppose you were shown a cut something like Exhibit No. 2, that you have made, and in bending it around to a right angle you would find that the lines did not meet truly, or that some parts of the edges would come together before it was bent to a right angle, would you or any workman, from an examination of such cut or model, know what was necessary to do to make the joints meet?

A. 27. I could, as I was informed by Goehler how he wanted to make it; as to other workmen I could not give my judgment on it.

106 X Q. 28. I did not ask you what Goehler told you, but since you have volunteered the statement, tell us just what he said.

A. 28. The very words I cannot give, but by showing me the cut explained to me how he wanted to work it.

X Q. 29. Well, how did he explain it to you; as near as you can, what did he say?

A. 29. In showing me the cut he brought the cut to a square, like I am showing you now, reversed the cut again, and thought he could make it cold instead of heating it, and save labor. I don't remember anything else that he said.

X Q. 30. Do you know who directed him to experiment on that?

A. 30. No, sir.

X Q. 31. Do you know what he meant by saying that he had it now, the way they were going to make safes?

A. 31. I believe I do.

X Q. 32. Explain what you thought he meant.

A. 32. I understood from Goehler that it bothered him a good deal to make those round-cornered safes on a cheaper way than they used to.

X Q. 33. Did you understand that he was experimenting without directions from his employers or superintendent?

(Objected to as immaterial by J. H. Moore.)

A. 33. I don't know who directed him to experiment, if any one.

X Q. 34. Do you know whether the single frame cut out and bent from an angle bar was put in the front or back of the safe?

A. 34. They always put one in the front and one in the back; any safe-maker knows that.

X Q. 35. You have said in one of your former answers that the first safe you saw with a round corner and a bent angle-bar frame had but one frame in it. It is about that safe I ask you, whether that safe had the single frame in the front or back of the safe?

107 A. 35. I have said that that safe got only one frame in reference to Exhibit No. 1, as shown by Goehler; the frame in the back part of that safe was made on a different principle than what the front part was; the frame in front was bent like Exhibit No. 1.

X Q. 36. When was that safe made, as near as you can state?

A. 36. To my best knowledge, it was during the time October 25th to November 15, 1881.

X Q. 37. How was the back angle bar made in that safe?

A. 37. Instead of cutting out a dovetail, as shown by "*b b*," in Exhibit No. 1, lines, "*a*," were cut up to line "*d*" and bended cold.

X Q. 38. Were the front and back corners of that safe rounded upon the same circle?

A. 38. They were, as good as it could be done by bending the back part cold.

X Q. 39. Do you know when that back bar was bent?

A. 39. About the same time the front one was made.

X Q. 40. Had bars similar to that back bar been bent in Mosler's shop prior to the time Goehler showed you that drawing, Exhibit No. 2?

A. 40. Yes, sir; but some changes in it; some different than what I explained before.

X Q. 41. And had round-cornered safes been made from such bent angle bars before Goehler showed you a drawing like Exhibit No. 2?

A. 41. Yes, sir; express boxes.

X Q. 42. Were the angle bars in these boxes bent cold?

A. 42. No, sir; they got welded.

X Q. 43. Was an angular piece cut out of them before welding and bending?

A. 43. Yes, sir; a small piece was cut out.

108 X Q. 44. How was the outer sheet put on the safes made with round corners prior to the time Goehler showed you the drawing or cut you have spoken about?

A. 44. They were put on different ways; one way was made like Exhibit Mosler Round-Cornered Safe No. 1, and the other was made with an angle and like this, except that this has an angle bent and the other was cut in pieces.

The model referred to by the witness as this is offered in evidence as Mosler Round-Cornered Safe No. 2.

X Q. 45. Referring now to Exhibit Mosler Round-Cornered Safe No. 2, explain what you mean by having an angle bar in the corner cut in pieces.

A. 45. Take four pieces of angle iron, the length according to the safe, fasten them on the outside plate one-quarter of an inch lower than what the plate is, and lay your frame on it and fasten it.

X Q. 46. Then that would make two frames, one on top of the other, wouldn't it?

A. 46. No, sir; the angle iron below the frame is only a rest for the frame and is no solid frame.

X Q. 47. Who made these frames that you have described?

A. 47. I made some; other workingmen also made some.

X Q. 48. Have you described now all the modes of making round-cornered safes employed by the Mosler Safe & Lock Company prior to the time Goehler showed you that drawing or cut, Exhibit No. 2?

A. 48. I have, to my best knowledge.

X Q. 49. Could they have been made without your knowledge in Mosler's shop?

A. 49. They could; because I was away for a while.

X Q. 50. I mean while you were there.

A. 50. I hardly believe it.

X Q. 51. What part of the shop did you work in in November, 1881?

109 A. 51. 2nd floor.

X Q. 52. Do you know how many men were employed in Mosler's Safe & Lock Company at that time?

A. 52. I do not know.

X Q. 53. State about how many.

A. 53. I can't do it; I don't know it.

X Q. 54. Did the first round-cornered safes, made after the plans

of models Nos. 1 and 2 of Mosler round-cornered safes, have a single sheet bent around the sides and top and underneath the lower corners?

Objection by J. Moore.
(Objected to as irrelevant and immaterial.)

A. 54. They did; but underneath was also riveted together and the safe was filled from the back.

X Q. 55. You mean the sheet extended all the way around?

A. 55. Yes, sir.

X Q. 56. Were any made with the sheet extending only part way under the bottom, leaving an opening so that the safes could be filled from the bottom?

A. 56. I didn't see any made.

Redirect examination:

Q. 57. You will please take a leaf of paper handed to you and cut it as you did Exhibit No. 2, so as to show the angle cut upon the angle bar as used by the express boxes.

A. 57. That is blacksmith work, and don't belong to my trade at all. I have done it, and herewith present paper cut as requested, marked Goehler Exhibit No. 3.

Q. 58. As I understand you, the edges of this cut are lapped over each other sufficiently in bending the angle iron to entirely close the slip, and in that condition the faces are welded together; is this right or not?

A. 58. Yes, sir.

110 Q. 59. Who is the tool-maker you saw sawing out an angle iron after the model Exhibit Goehler No. 1?

A. 59. That man sitting over there—George Thorwarth.

Q. 60. In answers 25 and 26, cross-examination, you say in substance that a month before the time Goehler showed you Goehler Exhibit No. 2 you had heard that the firm Mosler Safe & Lock Company wanted to make safes "of that kind." I want to know what you mean by this. How did you know, a month before Goehler showed you the exhibit in question, that the firm wanted to make round-cornered safes or bent angle bars?

A. 60. I was making safes like Exhibits Nos. 1 and 2, Mosler's round-cornered safes, and they used to make a good deal of work. I spoke in regard to those safes to my foreman, Goehler, and he stated them kind of safes would be soon abolished, for he wanted to make the other kind, in question now.

Q. 61. How did he then describe that other kind that you say is in question now, and how did he say he was going to make them?

A. 61. There were no particulars spoken about at that time.

Q. 62. If there were no particulars spoken of and if Goehler at that time didn't know how to cut and bend an angle iron, such as shown in Exhibit No. 2, how did you know that he was wanting to make safes such as shown in Goehler Exhibit No. 2?

Objection by George Murray.

Question is objected to—
1st, because it is argumentative.
2nd, because it assumes that Goehler did not know at that time how such safes were made.

A. 62. I have answered that before in the previous question.

111 Q. 63. In your answer to question 60 you say that Goehler stated, "Them kind of safes would soon be abolished, for he wanted to make the other kind, in question now." What I want to know is, what it was that Goehler then stated by which you knew that he desired to make safes upon angle irons, such as shown in Exhibit Goehler No. 2.

Objection by Murray.
(Question objected to as being fully answered before.)

A. 63. He stated that he wanted to make other kind of safes, but didn't tell me no particulars at that time how he wanted to make them, and, being my foreman, I did not want to ask him what he would not tell me freely.

Q. 64. Well, when you said that you knew that the firm wanted to make safes of that kind a month before, as you did substantially in your 25th and 26th answers, what was it explicitly that you did know that month before?

A. 64. I did know through my foreman that they wanted to make something new, but I didn't get no particulars of him, and it wasn't my business to ask him.

Recross-examination:

X Q. 65. You have stated in one of your answers that one frame was made of an angle bar like Exhibit No. 2, and the other was of a different angle bar or cut out in a different way in order to permit it to bend; will you take a sheet of paper and cut out an exhibit representing how that angle bar was cut out and bent?

A. 65. It was about this way (referring to Goehler Exhibit No 4), in a rough style, for it is put inside where no one sees it and is covered with the back.

X Q. 66. Were the edges or lines which I have marked "A A" cut at an angle of 45 degrees to the lower edge of the severed angle?

A. 66. They were not cut close to 45 degrees; there was plenty of room given there.

112 X Q. 67. Was that the first angle bar you saw bent cold?

A. 67. It was, to my best knowledge.

X Q. 68. Who bent that and how long was it before you were shown cut like Exhibit No. 2?

A. 68. It was bent after I saw the Exhibit No. 2.

X Q. 69. Who bent it?

A. 69. I don't know the name of the man any more; it was in the department where they make that work.

Adjournment.
Adjourned until 9½ a. m., December 12th, 1882.

X Q. 70. And that, you say, was used in the same safe as the angle iron like Exhibit No. 2?

A. 70. It was used in the back part of the safe.

X Q. 71. In reply to question 67 you say that that angle bar, about which you were questioned, like Exhibit Goehler No. 4 was the first angle bar you saw bent cold, to the best of your recollection, and in answer to question 68 you say you saw this bent after you saw Exhibit Goehler No. 2. Which did you see first, the bending of the bar cut out like Exhibit Goehler No. 4 or the paper or cut like Exhibit Goehler No. 2?

A. 71. I saw Exhibit No. 2 before seeing the bending like Exhibit No. 4.

X Q. 72. How long was it after you saw the cut like Goehler Exhibit No. 2 until you saw the bending of the bar cut out like Exhibit No. 4?

A. 72. To my best knowledge, it was two or three days afterward.

X Q. 73. When did you first see a bar bent that was cut out like Exhibit No. 2?

A. 73. During the time—October 25th to November 15th, 1881.

X Q. 74. Is that as near as you can come?

A. 74. That is as near as I can come.

113 X. Q. 75. Which did you see bent first, a bar like Exhibit No. 2 or like Exhibit No. 4?

A. 75. I saw Exhibit No. 2 complete before I saw Exhibit No. 4 bent.

X Q. 76. Were either of these first bent bars welded after bending?

A. 76. None like Exhibits No. 2 or 4 show.

X Q. 77. How were they fastened together at the corners?

A. 77. We will have to divide that. Exhibit No. 2 was fastened in the corner or corners by laying a piece of iron in the inside of it, fastened by four $\frac{5}{16}$ rivets; in regard to Exhibit No. 4, there was no fastening in the corners.

X Q. 78. Was the fastening in the corner of wrought or cast metal?

A. 78. As far as I remember, the first ones was made of wrought iron; afterward they were made out of malleable iron.

X Q. 79. What was the difference between the two shapes used, the wrought and the malleable?

A. 79. The shape was mostly alike.

X Q. 80. You are and have been for some time on quite intimate terms with Mr. Goehler, have you not?

A. 80. I have been on good terms with Goehler before ever I worked for this firm, and I am still on good terms with him.

AUGUST SCHULTZE.

CHARLES BUFFLER, being first duly sworn, deposes and says, in answer to interrogatories:

Q. 1. State your name, age, residence, and present occupation.

114 A. 1. My name is Charles Buffler; I am 32 years of age, and I reside No. 209 Linn, and I am a machinist just now.

Q. 2. State whether you ever worked for the Mosler Safe & Lock Company, when you worked for them, and what was the character of your occupation when you worked there.

A. 2. I worked there at two different times; first time during the summer of 1880, and the second time from the middle of May, 1881, till the first part of August, 1882; the first time I was making doors and the second time I was employed as locksmith in the paint shop.

Q. 3. What proportion of the safes made at the factory, when you worked as locksmith in the paint shop, passed through your hands, and in what state or stages of manufacture were the safes when they passed through your hands?

A. 3. Every one, as long as I was working. Only in the first part of November, 1881, I was sick and laid off, and those made during that time did not pass through my hands; they come to me first after the doors were fitted—that is, before painting; and, secondly, when the safe was all finished, except the lock.

Q. 4. How long were you sick in the first part of November, and about how many safes do you think were finished at that time, if any, without passing through your hands at all?

A. 4. I was sick for about two weeks, and no more than a hundred were shipped during that time; as soon as they were done they were shipped.

Q. 5. How long does it take, in the usual course of manufacture, from the time a safe first passes through your hands until it is ready for shipment?

A. 5. Not less than one week in the usual course of time; they can make it in shorter time.

115 Q. 6. You say that not over a hundred were shipped during your absence from the factory at that time; were there any of those hundred that did not pass through your hands, either before filling or when you finally fix on the lock; if there were any such, how many, according to your best judgment?

A. 6. All the safes were filled before I got onto them, and about the hundred in question I average about the half that I have seen before I was laid off, and the other half very few may have been shipped which I didn't see when I came back.

Q. 7. Do you know George J. H. Goehler, the plaintiff in this suit?

A. 7. Yes, sir.

Q. 8. Do you know whether he made any invention in safes during 1881? If you do, state what that invention was, as well as you can, and how you know that.

A. 8. Well, I couldn't say nothing for sure, only what I heard from other workmen in the factory—that it was Goehler who got

out the bending of that angle; the invention was the bending of that angle; I know it by hearing it of other parties and seeing him very often working around or at it.

Objection by Mr. Geo. Murray.
(Mere hearsay testimony objected to.)

Q. 9. State when, as nearly as you can, that firm commenced to make safes embodying angle irons cut and bent according to Goehler's invention.

A. 9. As far as I can recollect it, I saw the first round-cornered safe in the first part of December, 1881, under Goehler's invention.

Q. 10. Did that firm before that time make any round-cornered safe or safes upon a different plan?

A. 10. I recollect seeing one a short time before Goehler's invention.

116 Q. 11. You will please state, if you know, how the corners in that safe were constructed, and if you see any models on the table before you that tend to illustrate its construction you may refer to them.

A. 11. I did not see the corner in the inside. (Witness, referring to models Mosler round-cornered safes Nos. 1 and 2, and pointing to the outside, says, "That is the way I saw them.")

Q. 12. If you see any drawing around that illustrates the Goehler invention of cutting and bending angle bars you will please refer to it.

Objection by George Murray.
(Counsel for Mosler objects here once for all to the assumption that Goehler made any invention in safes, and requests that when the invention in angle bars be hereafter referred to it be to the invention here in controversy.)

A. 12. I didn't see any at all until they were afterward made into safes; I see it here (witness pointing to Goehler Exhibit No. 2).

Q. 13. When a safe passed through your hands, either in the first stage or the second stage, did you always know exactly how, if it had a round corner, that corner was constructed—that is, whether made like the models 1 and 2, Mosler's round-cornered safe, or like the paper Goehler Exhibit No. 2?

A. 13. In the first stage I could always tell; in the second stage I could tell when the safe was varnished and the cement was moist—not quite dry; and if a person looks at it very close, even when the cement is dry, he can find it out.

Q. 14. Well, did any safe ever pass through your hands prior to the 4th of November, 1881, that had an angle bar in it like that shown in Goehler Exhibits Nos. 1 and 2?

A. 14. No, sir.

Q. 15. You have said you heard the hands talk about this invention as being Goehler's invention; did you hear any great number of them, or about what proportion of them?

117 Objection by George Murray.

(Objection to question because it calls for mere hearsay testimony.)

A. 15. I heard them during dinner hours, standing in a group, talking about it, about 10 or 15 of them.

Cross-examination:

X Q. 16. Who gave you orders about your work or what you should do while you were at Mosler's Safe & Lock Company?

A. 16. I generally started to work on one end, and when an order was in a hurry it was the painter foreman to finish that order first. Everybody was foreman then; there's the bosses, Mike Hemler, Geo. J. H. Goehler, and Frank Dellar.

X Q. 17. Do you say that when the first round-cornered safes made by the Mosler Safe & Lock Company came into your hands the front of the safe or safes looked like the Exhibits No. 1 and 2 Mosler Round-Cornered Safes?

A. 17. Yes, sir; I am only referring to this joint here upon the outside.

X Q. 18. Did they have mouldings in front or not when they came into your hands?

A. 18. I could not remember.

X Q. 19. If they did have mouldings in front could you tell what kind of a joint they had, and how could you tell it?

A. 19. Yes, sir; for there was always from one-half of an inch to three-quarters of an inch part of the frame which could be seen.

X Q. 20. Was that part on the inside of the frame or on the outside?

A. 20. That was on the inside of the moulding, but the outside of the frame. (The answer being read to the witness, he says: No; that is not the answer.)

118 X Q. 21. I will ask you whether the moulding, which is usually put upon the front of safes is placed flush with the outer edge of the safe frame or whether the inner edge of the moulding comes flush with the edges of the door opening; I want to ascertain from you what portion of the safe front is covered by the moulding, and what part is left exposed after the moulding is put on.

A. 21. The moulding, when there is any on, is put flush with the outer edge of the frame, so the space from the moulding to the opening of the door can be seen.

X Q. 22. When there were mouldings put on the front of safes was this work done before the safe came into your hands?

A. 22. Yes, sir.

X Q. 23. When did you first hear of experiments being made upon round-cornered safes; was it before or after you were sick and laid off, as you say?

A. 23. I don't remember, as my sickness was but for a short time; but in December, 1881, I was hurried to get the safes out as soon as possible, for they were going to make all round-cornered safes.

Question repeated.

X Q. 24. Where are you now employed?

A. 24. At the Miller, Dubrul and Peters Manufacturing Company.

X Q. 25. You say that you can always tell the shape of the joint in the front of a safe even after it is painted and varnished if painted and varnished before the filling is dry. Is that statement true of safes having a moulding on front?

A. 25. That is, if they make the moulding the old way; if they make mouldings to cover the whole frame I can't see it, but they never made any, to my knowledge. I believe they made a few; I ain't sure—that is, the corner piece; the moulding never covers the whole frame in any safe factory, so far as I see.

119 X Q. 26. When an outside moulding is placed upon a safe it matches up against a corner piece, does it not? How near does the inner corner of that corner piece come towards the corner of the door opening?

A. 26. That depends how the corner piece is made—when the corner piece reaches the inner end. The moulding matches the corner piece, but the inner corner of the corner piece is made at will.

X Q. 27. The inner corner always projects inside of the moulding or further towards the edges of the door opening, does it not?

A. 27. Yes, sir.

X Q. 28. How were they on the safes made by the Mosler Safe & Lock Company when you were working there in November and December, 1881, and prior thereto. I want to know about what distance was left on the front of the safe frame between the corner of the door opening and the inner corner of the corner piece.

A. 28. I don't believe, but I am not sure, that they made but one round-cornered safe which had mouldings, and I believe, but am not sure, that the corner piece was round and the same width as the straight moulding, about the shape of a rope. The distance from the moulding to the inner edge of the corner piece is about one inch—that is, if they had that moulding on; that moulding mentioned in the first part of my answer.

X Q. 29. You are not sure, then, that they ever made a safe with round corners with a moulding on in front, are you?

A. 29. Yes; they did make a safe or safes with mouldings, but I don't remember the time; they made a few last summer, just before I quit.

X Q. 30. What is your best recollection as to whether or not they made round-cornered safes with mouldings or not prior to November, 1881?

120 A. 30. I recollect not having seen any round-cornered safes before my sickness, but I am sure I saw one after I came back to work.

X Q. 31. Then you are pretty sure that none were made by the Mosler Safe & Lock Company with round corners and mouldings on in front prior to November, 1881?

A. 31. That is, I did not see any in the paint shop.

Re examination:

Q. 32. You have said, in answer to cross-question 30, that you did not see any round-cornered safes before your sickness. What I want

to know is what you mean by round-cornered safe. Do you mean that you did not see any before that time made like Exhibit Mosler's Round-Cornered Safes Nos. 1 and 2, or do you mean that you did not see any made upon angle irons such as Goehler Exhibit No. 2?

(Question objected to as suggesting the answer desired by George Murray.)

A. 32. I mean by round-cornered safes which are not square on top, referring now to Model Mosler Round-Cornered Safe No. 1. I mean that when side and top instead of making a square the two ends make part of a circle.

Q. 33. You have heretofore testified that there was a safe or safes made at the Mosler safe & lock factory before Goehler's invention with round corners and constructed similarly to the models or one of them—Mosler round-cornered safe. What I want to know is when such safe or safes were made.

A. 33. When the safe was made I don't know; I only can tell from about the time the safes come into the paint shop.

Q. 34. Did that safe or safes with round corners and made like the Exhibits Mosler Round-Cornered Safes Nos. 1 and 2 come into the paint shop before your sickness or afterward?

121 A. 34. As far as I recollect, the first safe came in during my sickness.

Q. 35. Was that safe made like the models Exhibits Round-Cornered Safe or like Goehler Exhibits Nos. 1 and 2?

A. 35. They were like Mosler's exhibits.

Q. 36. Did those safes last referred to have mouldings on?

A. 36. I don't remember.

Q. 37. How long was it, according to your present recollection, after you saw the first safe round-cornered and made like the Mosler exhibits in the paint shop until you saw a safe made after the Goehler model, as shown by Goehler Exhibits No. 1 and 2?

A. 37. I believe about four weeks.

Q. 38. Do you recollect what sizes these two safes were—that made like the Mosler models and that made like the Goehler exhibits?

A. 38. I believe both were what they call No. 5.

CHARLES BUFFLER.

Adjourned until 1½ p. m. to-day.

LOUIS GERWE, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and present occupation.

A. 1. Louis Gerwe; age, 20; reside 161 Twelfth street, Covington, Kentucky, and I am at present in employ of the Cincinnati Pump Company, Nos. 123 and 125 East Pearl street.

Q. 2. Did you ever work for the Mosler Safe & Lock Company of this city; if so, at what particular branch of their business did you so work? State when you went there and when you left.

122 A. 2. I worked for Mosler Safe and Lock Company; began in April, 1879, and quit in March, 1882, and worked in the box department.

Q. 3. Working in the box department, would you necessarily see every safe made in the factory?

A. 3. All fire-proof safes I would see, excepting some house safes that were made on 2nd floor.

Q. 4. Did you know of any round-cornered safes having been made at the factory during the time that you worked there constructed or like or similar to either of the models now before you (Exhibit Models Nos. 1 and 2, Mosler's Round-Cornered Safes)? If so, state how many such safes were made, when they were made, and what, if anything, you had to do with their manufacture.

A. 4. I did make a round-cornered safe; none like they make at the present time. They were round-cornered, but not the works of the corner frames, as they make them now. I made one like this (Mosler Model No. 1 taken in hand by the witness), and this was made first round in the spring 1881. The windows were open in the shop. I was in a hurry while I did make it, and after I did make it it was standing down-stairs awhile.

Q. 5. Was there but one round-cornered safe made of the character you describe, to your knowledge, or were there more?

A. 5. There were more made.

Q. 6. About how many were made altogether of that kind?

A. 6. Well, I couldn't tell you. I have no number at all to my mind. I know there were two to be made whilst I made the one.

Q. 7. Do you mean that there were two more made of that kind in the factory after you made the one?

A. 7. Only one besides mine, but after them two were made. There might have been more, but I don't remember.

123 Q. 8. After that were there other round-cornered safes made; if so, when was the first such other one made, and how did it differ from the models you have just examined?

A. 8. There were others of a different kind made. The first was made about the last part of October, 1881. The one I seen made was made of angle iron and a flat-iron frame—that is, had the angle iron inside and cut off at the corner—that is, the corner didn't have any bearing at all.

Q. 9. Well, after that were there any safes made with a round corner, made by cutting out one web of angle iron and bending the other web around it so as to make a round corner, about as shown in Goehler Exhibits Nos. 1 and 2 (shown to witness); if so, when was the first of any such safes made?

A. 9. There was a round-cornered angle-iron frame made, but I couldn't tell how it was cut out. I couldn't tell how it was cut out—that is, any kind of pattern Mr. Goehler shows; I mean before the one I made in November, first part 1881.

Q. 10. If you made a safe in first part of November, 1881, with a round corner upon a bent angle frame, you will please describe how the angle iron was cut and bent, if at all, and in doing this you may

refer to Exhibits Goehler Nos. 1 and 2, if you find them useful in illustrating what you mean.

A. 10. I don't know how the front frame was bended at all—that is, the angle-iron frame—but the back angle iron we only cut out to our own mind, just the way we wanted to, and bent it around on the vise—that is, kind of round; any way, as round as we could get it. I got it drilled and punched out so I could get it around. I just took out one web of it, one corner. Well, I took out four places, one in each corner, something like this Goehler Exhibit No. 4, but not quite so particular.

124 Q. 11. Well, do you know that the front angle iron of that safe was different from what you have just described as the form of the back angle iron?

A. 11. I don't know; I didn't see it cut out.

Q. 12. Did you ever see angle irons cut in accordance with the lines shown, Goehler Exhibit No. 1, and bent as I now bend Goehler Exhibit No. 2?

A. 12. Yes, sir; I did something like it.

Q. 13. Well, where did you see it?

A. 13. At Mosler safe & lock factory.

Q. 14. When did you first see such an angle iron either thus cut or thus cut and bent?

A. 14. Well, it must have been about three weeks after I made my first round-cornered safe that I made round—first part of November.

Q. 15. Do you know when such an angle bar cut like the Goehler exhibits was first used in a safe in said factory?

A. 15. No, I couldn't remember when it was first used.

Q. 16. Did you know when a safe passed through your department constructed with round corners how the corners were made?

A. 16. Yes, sir; I did.

Q. 17. When was the first safe made with angle irons cut and bent like the Goehler Exhibits Nos. 1 and 2, so far — you knew?

A. 17. It was a long time after I made my first safe; made in November, 1881; I couldn't tell exactly.

Q. 18. That safe that you made in November with round corners that the back angle frame was cut something like Goehler's Exhibit No. 4, what size safe was it and was it made with the new or old pattern of casting?

Objection by Mr. Murray.

(Question is objected to as misleading, the witness having answered to question 8 that he made that safe in October.)

125 A. 18. It was a No. 5 safe that I made in November, and I couldn't tell whether it was made with the old or new pattern of casting.

19 Q. Now, isn't it a fact that that No. 5 safe made by you about the beginning of November had its front angle frame cut and bent as shown in the Exhibits Goehler Nos. 1 and 2?

Objection by Mr. Murray.

(Question objected to because the witness has already stated in an-

swer to question 10 that he didn't know how the angle frames were cut or bent.)

A. 19. Well, I couldn't tell how the front angle frame was bent at all.

Q. 20. Who got up or invented the mode of cutting and bending angle irons shown in Goehler Exhibits Nos. 1 and 2?

A. 20. I couldn't tell no more than I heard, and that was from the fellow that was punching the iron. I asked him "whose pattern is that again," and he says "Goehler's."

(Last part of the answer objected to as hearsay by Mr. George Murray.)

They called that fellow "Irish."

Q. 21. When was it you had that conversation with "Irish?" Was it at the time you were making that No. 5 safe?

A. 21. Yes, it was after that time; how long I couldn't just say.

LOUIS GERWE, recalled, testified, in answer to further interrogatories, as follows:

Q. 22. That safe, No. 5, that you made in November, 1881, did the inside corners of the front angle iron have pieces riveted in them? If so, describe what the appearance was.

A. 22. Yes, sir; they had pieces riveted in them; I can give
126 you a drawing of them. (Witness takes a piece of paper.) It was like this, with $\frac{5}{16}$ rivets where the dots are; something like it, anyway, which is herewith attached, marked "Goehler Exhibit Gerwe's Sketch."

Q. 23. Did this plate shown in the Gerwe sketch cover the whole of the angle, or was there not a portion of the angle iron extending out underneath that plate in the direction of the line "A B," which I have marked under the sketch?

A. 23. It did not cover the whole of the angle; there was a portion extending out and it might be an eighth ($\frac{1}{8}$) of an inch, extending out from the edge of the plate.

Q. 24. You will please examine Goehler model No. 1, shown to you, and state whether you could see in the angle you have been describing and in the eighth ($\frac{1}{8}$) of an inch outside the angle plate that you have described a joint such as appears in Goehler Exhibit Model No. 5, which is herewith offered in evidence.

A. 24. You could see a joint like this from the outside; you couldn't see inside, because the lug was there; you couldn't see the joint after the lug was over it. We didn't get enough pay to look in there long.

Q. 25. How does the Model Goehler Exhibit No. 5 compare with the angle iron of the No. 5 safe made by you in November, 1881?

A. 25. Well, I never saw it this way. I always saw them finished.

Q. 26. You say in answer to question 24 that you could see the joint from the outside, but you couldn't see it from the inside, because the lug was there. Wasn't there a portion of the joint not covered by the lug and did you not see that?

A. 26. Yes, sir; I did. There was a portion left. I was a going to tell you awhile ago, but another question was put in and I couldn't tell it. I always said there was an $\frac{1}{8}$th of an inch left and you would be bound to see that little corner there, too. Just that
127 much of the joint I did see as was outside of the lug. Sometimes the lug was not cut so particular, because they were out of wrought iron first; afterward there was malleable iron and then they were more particular. I don't just remember how far they went after the malleable iron was introduced in the lugs.

Q. 27. How does the outside of Goehler model No. 5 compare with the outside of the front angle iron that was used in that No. 5 safe that was made in November, with reference to the joints shown in the model?

Objection by Mr. Murray.

(Objected to for the reason that the witness has already testified that he did not know the front angle iron that was in that safe was cut or bent.)

A. 27. At the outside you couldn't tell much at all; it was something like Goehler Exhibit Model No. 5.

LOUIS GERWE.

HERMAN SCHMIDT, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and present occupation.

A. 1. My name is Herman Schmidt; I am 30 years of age, and I reside No. 587 Sycamore street, and work now at Cincinnati Safe & Lock Company.

Q. 2. Did you ever work for the Mosler Safe and Lock Company — this city; if so, when did you go to work for them and when did you quit their employ?

A. 2. Yes, sir; I was working for Mosler Safe and Lock Company; when I began I cannot tell exactly, but I quit the last part of June or July, 1881. I was working there about a year.

Q. 3. What was your occupation while you were in the employ of the Mosler Safe & Lock Company?

128 A. 3. I was what they call tool-maker down there.

Q. 4. Was there any tool-maker in the establishment but yourself?

A. 4. No other tool-maker finished the work on the vise.

Q. 5. You will please examine Goehler Exhibits Nos. 1 and 2 and 5 and tell us what kind of tools would be necessary in order to cut a bar as shown in Exhibits 1 and 2, so that it could be bent into the form shown in Exhibit No. 5?

A. 5. Well, if it should be made so as it could pay the firm, a punch would have to be made to punch out the space included within the lines "*d b b*" and "*a a*" but it could be done without—that is, with hand-work. Goehler Exhibit No. 1 was referred to by witness in making this last answer. A die would be necessary.

Q. 6. Was there any such punch or die made in the Mosler safe & lock factory, to your knowledge, while you were in their employ?

A. 6. No, sir; there was not.

Q. 7. Could such a punch and die have been made in that establishment while you were there without your knowing of it?

A. 7. Not inside of the factory during working time.

Q. 8. How long would it have taken a man to cut an angle iron in the way pointed out so that it would have answered one front of a safe, if he did it altogether by hand?

(Objected to for the reason that it does not appear that the witness is qualified to testify as to this kind of work by George Murray.)

A. 8. If he got a sketch or sample to work it out by, then he has anyhow, in order to make it right, to work for about two hours to make it right and nice.

H. SCHMIDT.

129 LEOPOLD MORITZ, being first duly sworn, deposes and says, in answer to interrogatories:

Q. 1. Do you speak English sufficiently well to answer the questions that may be put to you?

A. 1. No, sir; I can't speak it and can't understand it.

(Whereupon Julius Walther acts as interpreter, having been previously sworn.)

Q. 2. State your name, age, residence, and present occupation.

A. 2. Leopold Moritz; 49 years of age; Newport, Ky., is my residence, and I am a safe-maker.

Q. 3. Did you ever work for the Mosler Safe & Lock Company? If so, state the time you went there and the time you left.

A. 3. Yes, sir; I worked for them, and I cannot give the time exactly. I worked there about four years, and left them last summer, 1882.

Q. 4. Were you familiar with the facts in relation to the invention shown in Exhibit Goehler No. 1? If you were, state such facts in detail, asking for your knowledge, with the dates as nearly as possible, and in the order of their occurrence.

A. 4. No, sir.

Q. 5. Do you know what Exhibit Goehler No. 1 represents?

A. 5. I know what it represents; the drawing is not the same way as shown me by Mr. Goehler.

Q. 6. Take a piece of paper now handed you and cut it of the form shown to you by Goehler, so that it may be made an exhibit in the case.

A. 6. This is it; I cannot cut it exactly. I mark it Goehler Exhibit No. 6, and make it a part of my answer.

Q. 7. When this was bent, as I now bend it, did the lines "*a*" fit against each other, and did the edge indicated by the line "*c*" come in close contact with the lines "*b b*?"

130 For Mosler, George Murray desires the notary to state of record that Goehler No. 6, as bent by the witness and handed in as an exhibit, was bent upon a line passing through the angles

at the narrowest portion of the opening, and that the bend made above that on line "*c*" was made by counsel for Goehler before the last question was put.

Counsel for Goehler desires to say that such statement is quite unnecessary, as he (Goehler's counsel) has just made the bend above the line "*c*," and marked the lines and letters in presence of all the parties, eight people, so there is no secret about it, and it was done as a portion of preparation for an intelligent question to the witness.

Counsel for Mosler states that the request was made because the officer before whom this case is to be tried was not one of those eight persons.

A. 7. The lines "*a a*" fitted accurately, and the edge of line "*c*" came in close contact with lines "*b b*."

Q. 8. Take a pen and draw a line in ink transversely across Goehler Exhibit No. 6, showing where the bend in the angle iron was.

A. 8. I do so by drawing on the exhibit a line on which witness has written his name.

Q. 9. When did Mr. Goehler show you this, and what did he say when he showed it to you?

A. 9. I cannot definitely give the time; he asked me what I thought about it, whether it would work, and if I thought it was right.

Adjourned until 9½ a. m., December 13th, 1882.

Q. 10. State the time, as nearly as you can, when Goehler showed you the piece of paper cut like Goehler Exhibit No. 6?

A. 10. I cannot exactly state the time; it was either at the end of November or the beginning of December, 1881.

131 Q. 11. Had you, before that time, ever seen any safe that had been made upon angle irons cut like Goehler Exhibit No. 6, or had you seen any angle bars so cut?

A. 11. No, sir; neither.

Q. 12. If any such safes had been made in the factory, or any angle bars had been cut in that way in the factory, prior to that time, do you think you would have seen them?

A. 12. I could have seen them, I worked in the shop; they would be bent down-stairs in the blacksmith shop; I worked in the same department, down-stairs.

Q. 13. How long after you saw the paper cut like Goehler Exhibit No. 6 was it until you saw angle irons cut in that way, and where did you see them?

A. 13. The following day, in the blacksmith shop.

Q. 14. Did you see about that time Moses Mosler, Michael Hemler, and George J. H. Goehler engaged in conversation in the blacksmith shop? If yes, and you know what was said by them or by either of them, state it.

Objection by Geo. Murray.
(Form of the question is objected to as leading).

A. 14. Yes, I did seem them in conversation. I did not hear what was said, but immediately thereafter Goehler came to me and

complained that Mr. Mosler had asked whose invention that was, that and Mr. Hemler had said that it was nobody's invention; it had to be made that way.

Objection by Mr. Murray for Mosler.

(The last part of the answer objected to as not responsive to the question, it being mere hearsay.)

Cross-examination by GEORGE MURRAY for Mosler:

X Q. 15. State where you are working now and why you left the Mosler Safe & Lock Company.

A. 15. It did not suit me well any more and I work at present for Mosler, Bahman & Co.

132 X Q. 16. Have you been with Mosler, Bahman & Co. ever since you left the Mosler Safe and Lock Company?

A. 16. Yes, sir.

X Q. 17. Were you not induced to leave the Mosler Safe & Lock Company by an offer of more wages, which offer was made to you by Mosler, Bahman & Co. while you were still in the employ of the Mosler Safe & Lock Company?

Objection by James Moore for plaintiff.

(Objected to as irrelevant and immaterial.)

A. 17. No, sir.

X Q. 18. Didn't you state to Michael Hemler, before you left the Mosler Safe & Lock Company, that you had been offered a place with Mosler, Bahman & Co., and that that company, or some one in the interest of it, had offered you more wages to leave the Mosler Safe & Lock Company?

A. 18. Yes, sir.

X Q. 19. Do you get more wages than you got at the Mosler Safe & Lock Company?

Objection by James Moore for plaintiff.

(Objected to as irrelevant.)

A. 19. Yes, sir.

Re-examination:

Q. 20. Didn't the Mosler Safe & Lock Company offer you the same wages you are now getting to stay with them?

A. 20. No, sir.

LEOPOLD MORITZ.

GEORGE THORWARTH, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. Do you speak English sufficiently well to answer the questions that may be put to you?

133 A. 1. No, sir.

Thereupon Mr. Walther acted as interpreter for the witness.

Q. 2. State your age, name, residence, and occupation or trade.

A. 2. George Thorwarth is my name; I am 24 years old; I am a locksmith; I reside No. 17 Browne street.

Q. 3. Did you ever work for the Mosler Safe and Lock Company of this city? If so, state the time and work you were employed at.

A. 3. Yes, sir; and I worked at fire-proof locks the first fourteen days, and then I became tool-maker, and thereafter I was general machinist in the shop; began 16th or 18th day of August, 1881, and quit about 3rd of March, 1882.

Q. 4. State whether you are now familiar with the mode of cutting angle bars so as to enable them to be bent and thereby form a round corner for a safe, as shown in Goehler Exhibit Model No. 5. If you are, who first showed you how to do that?

A. 4. Yes, sir; I am familiar with the same; Mr. Goehler first showed it to me.

Q. 5. State about when he first showed it to you.

A. 5. Well, he came to me and requested me to procure a piece of angle iron about a foot long, and thereupon he showed me with lead-pencil marks the shape which I should cut out with a chisel; he said we would cut that out and see whether we could make round corners.

Q. 6. Well, did you cut it out and bend it, and what was the result?

A. 6. We cut it out and bent it and found that there was too much material in the corner and the corner was not right round.

Q. 7. Take a piece of paper and make a sketch or drawing upon it, showing the way that one was cut and point out
134 with reference to that sketch why the iron didn't bend right.

A. 7. Witness takes a piece of paper and marks as requested, and the same is marked Goehler Exhibit No. 7. The reason it did not bend properly was because of the surplus material in the bend; it did not form a perfect angle.

Q. 8. What next did Goehler do to remedy that, if anything?

A. 8. He said I should get an additional piece of angle iron; it must work.

Q. 9. Did you get an additional piece of angle iron and cut it; and if you cut it differently from the mode shown in Goehler Exhibit No. 7, then take another piece of paper and cut it in accordance with the mode that Goehler instructed you to cut the second piece of angle iron.

A. 9. I did get another piece, and Goehler ordered me to cut out—that is, showed me with lead pencil the manner in which I was to cut out this 2nd piece of iron, and the witness cuts out on separate piece of paper the manner of said cutting, which is marked Goehler Exhibit No. 8.

Q. 10. Well, was the piece of angle iron bent like Exhibit Goehler No. 8 satisfactory to Goehler?

A. 10. No, sir.

Q. 11. Was anything more done toward completing it upon that day; and, if not, when did Mr. Goehler again approach this subject to you and what was then done?

Objection by Mr. Murray for Mosler.
(The last part of this question objected to as leading.)

A. 11. No; nothing more was done on that day, and the next day at 9 o'clock, at lunch time, he said he had found out so much that it must work; he said I should go up with him to his office and he would show me on paper.

Q. 12. Well, did you go up to his office? If so, state what there occurred, and if he showed you a cut or sketch please take a piece of paper and reproduce such cut or sketch as accurately as your memory will permit.

135 A. 12. I went up to the office with him and Goehler sat down at the desk and I stood behind him. There was only one chair. He made a sketch on a piece of paper, drawing paper; it was about a foot long and six inches wide; it was in lead pencil. And witness, taking a piece of paper, makes a sketch and cut, which is marked Goehler Exhibit No. 9.

Q. 13. When, if at all, did Goehler or yourself, or both, proceed to cut an angle iron bar in accordance with the sketch of which Goehler Exhibit No. 9 is a copy? And state what was done at that time.

A. 13. We cut out an angle bar the same day and it fit tolerably well, and Goehler told me he went to see Hemler and couldn't find him, and then he went to the office and spoke to Moses Mosler about it. Mr. Goehler then returned and said Mr. Mosler had said that we should make one like it on hoops No. 5.

Q. 14. Did Goehler say to you that he had been to see Hemler and didn't find him and had been to see Moses Mosler before you cut out that first bar or afterward?

A. 14. Yes, sir; before.

Q. 15. How did that angle bar, when bent, compare with Goehler Exhibit No. 5, now shown to you?

A. 15. It was about three-inch angle iron, about two and a half to three inches; a long bar; it looked like this, only it was larger in proportion.

Q. 16. What I more particularly referred to in the last question was how the joint of that angle bar, when bent, compared with the joint of Exhibit No. 5 before you; was it a better fit or a worse fit?

A. 16. It fit as well as Goehler Exhibit No. 5. I worked according to a templet, and the templet was made according to a piece of paper cut out from a drawing given me by Mr. Goehler; it was the same piece that dropped out of the cut made by Mr. Goehler; I had to paste it onto a piece of sheet metal.

136 Q. 17. Was any person present other than yourself and Goehler either while you were preparing to cut that bar or while it was being cut?

A. 17. No one was with us, but there were people working in the shop at the time, but they didn't pay any attention to what we were doing.

Q. 18. After the bar was bent did Goehler call upon Moses Mosler to tell him what was done, if you know; and what, if anything,

did Mr. Goehler say as to what had taken place between himself and Mr. Moses Mosler on Goehler's return?

Objection by Mr. Murray for Mosler.

(The last part of the question objected to as calling for hearsay testimony.)

A. 18. Yes, sir; he went to see Mr. Moses Mosler, and Goehler told me then that Mr. Moses Mosler wanted to be present to see how the thing worked at bending; that Mr. Mosler had ordered an additional bar to be bent, as he wanted to be present.

Q. 19. Well, was an additional bar bent; if so, when was it bent, and who were present at the bending of it?

A. 19. Yes, sir; an additional bar was bent, No. 5, and there were present Mr. Moses Mosler and Goehler and I. It was after working hours and all hands were out of the shop. We had a light and a candle; it was a quarter after 7 when I got it finished.

Q. 20. Did Mr. Moses Mosler say anything at all about the time the second bar was being bent? If he did, repeat it and any conversation it led to.

A. 20. Yes; he came when the third angle was bent, and he witnessed the bending of the fourth angle and remarked that he believed the thing would work well. That is all Mr. Mosler said.

Q. 21. Give me your best recollection as to the day, month, and year when this took place.

137 A. 21. It was in the beginning of the month of November, the first week in November, 1881.

Q. 22. Was the first angle iron bent worked into a safe?

A. 22. Yes, sir; it was used for a safe.

Q. 23. Was that safe made immediately, and how long was it before it was finished?

A. 23. I cannot say as to that.

Q. 24. Do you know what sort of angle bar—that is, how cut and bent—was put in the rear of that safe?

A. 24. It was smaller angle iron; about an inch and a quarter to an inch and a half wide; it was cut out rough, and there was a vacant space in the corner.

Q. 25. You will please examine Goehler Exhibit No. 4 and see how the cut there shown compares with the way in which that rear angle bar was cut.

A. 25. No; the back hoop was cut out square; the corners were round, and there was considerable vacancy, about an inch and a half, right in the corners.

Q. 26. Do you recollect whether there was any effort to make the different cuts in that rear hoop uniform, or were they cut out just as it happened so as to be easily bent?

A. 26. They were cut at random.

Q. 27. How long after these first angle bars were cut was it, if you know, until there was a die and punch made for the purpose of cutting them out, and who made such die and punch if any such were made?

A. 27. I made them all. To bend the hoops there was made a

block of malleable iron; it was four-cornered, and I had to shape it round; and during the time I was engaged in preparing that block the blacksmith was engaged in making the punch and die; and I then got the punch and die in rough, and then had to work them out. I then had to make a punch as shown by this little paper, of which I make a copy in ink on Goehler Exhibit No. 9, marked "Copy of Punch."

138 Adjourned until 1½ p. m. to-day.

Q. 28. Was there any person in the factory who could make such tools except yourself?

A. 28. Yes, maybe; if it had been explained to them.

Q. 29. Did you receive any instructions in reference to the making of these tools from any person except Goehler?

A. 29. No; from nobody else.

Q. 30. Did you have charge of all the tools in the shop from the time you went there until you left?

A. 30. Yes, sir; I had charge of the tools; I was the only man that did that kind of work.

Q. 31. Were there any other tools for that purpose in the shop when you went there, or were any others made after you went there and before you made the ones you have just described?

A. 31. There were none of that kind there when I came there, and there were none made.

Q. 32. If any tools were required in the shop would you be necessarily called upon, from the position you occupied as tool-maker, to make such tools?

A. 32. Yes, sir.

Q. 33. Subsequent to your making of the tools you have just described did you make another set for the same purpose; if so, how did they differ from the first set?

A. 33. The first set of tools were used until they were broken, and then I made another set of two pieces—that is, we found from experience that the first die didn't answer the purpose very well, so we made the second die out of two pieces; the large part of the die was in shape of a triangle, making one piece, and the small part another.

Q. 34. If you had any conversation upon the matter of Goehler's invention with Moses Mosler or Michael Hemler in the presence of Moses Mosler you will please state when and where such conversation occurred, and what was said by each of the parties, and in what language, English or German, was it carried on?

139 A. 34. No; I had no such conversation.

Q. 35. Did you have a conversation with Mr. Mosler or Mr. Hemler, or both, at any time after you quit the employ of the Mosler Safe & Lock Company at the factory or office of said company upon the subject of the manufacture of round-cornered safes by Goehler or Mosler, Bahman & Co.? If you did, state the full particulars of it and what was said.

A. 35. The first time I wanted to go away Mr. Hemler asked me why I was about to leave, and I told him "the work didn't suit me any more; it was too dirty; I have prospects where I have cleaner

work;" he asked me if I could earn more there, and asked what wages I would receive there; I then said, at present I didn't know what wages I was going to get, because I was a new hand; I then told him that I could get $15 a week; Mr. Hemler thought I ought to work for them; I could get the same work and get $15 for a week's work—the same work on fire and burglar proof safes; he said I might have my choice—I could leave or stay; "I know why you want to leave. Mr. Goehler wants to make round-cornered safes, but couldn't make them without my aid." It wouldn't last but six months; that myself and Goehler would be driven out of the shop, and if Goehler made those round-cornered safes at Mosler, Bahman & Co.'s that he would see him taken to the penitentiary. I then said if he would pay me the same wages and give me the same work I would stay with him; I then worked for fourteen days or two weeks at the agreed price of $15 per week, but had only the same work I had had, but he didn't give me the work he had promised and I left; about three weeks afterward Mr. Hemler sent a boy after me twice, saying there was a punch missing; that I should come down to the factory to look for the punch that was missing, the lower part of the punch being lost; I didn't go up at first and he sent orders up again by the same boy, saying that if I didn't come and look for
140 that punch he would consider me a villain; I then went to Mr. Hemler and asked him whether he could prove that I was a villain, and he said he couldn't think otherwise than that I must have taken it along, as it was not to be found; he then said that he would have me arrested if I did not bring the punch; I said he could do so right away; I was there to be arrested; he then said, "I only wanted to see you again; we will let it drop and we will have to make a new one;" that's all.

Q. 36. Was Mr. Moses Mosler present at these conversations?

A. 36. At the second time when I worked up there? No; the time I wanted to quit he was there; he asked Hemler a question and walked away, and Hemler and I continued the conversation referred to.

Q. 37. In what language did Hemler and you speak, and in what language did Hemler and Mosler speak, and did you understand what Mosler said to Hemler?

A. 37. Hemler and I spoke in German; Mosler and Hemler spoke English, and I did not understand them; I was but a half year in this country.

Q. 38. When Hemler made the remark about Goehler and yourself being sent to the penitentiary was Mr. Mosler in such a position that he could hear it?

A. 38. No; Mr. Mosler was not there.

Cross-examination:

X Q. 39. Do you know what became of that punch Mr. Hemler was inquiring about?

A. 39. No, sir; I don't know anything more about it.

X Q. 40. Did you ever see it since you left the Mosler Safe & Lock Company?

A. 40. No, sir.

X Q. 41. Did Mosler, Bahman & Co. have a punch or punches of this kind when you left Mosler Safe & Lock Company and went to work for them?

141 A. 41. No, sir.

X Q. 42. Were Mosler, Bahman & Co. making round-cornered safes with angle bars cut out and bent like the Mosler Safe & Lock Company had been making before you left when you first went to work for Mosler, Bahman & Co.?

A. 42. No, sir.

X Q. 43. Do the round-cornered safes Mosler, Bahman & Co. are now making have cast metal angle pieces within the corners?

A. 43. No; they are made out of wrought iron.

X Q. 44. You say you did not like the work you were doing at the Mosler Safe & Lock Company. What kind of work were you given to do when you first went to Mosler, Bahman & Co.?

A. 44. I first made parts of locks for burglar doors for about fourteen days, and then I came down on the ground floor and worked at burglar box doors.

X Q. 45. Did you make any tools for them or give instructions how any tools were to be made?

A. 45. No, sir; they were done before I came. Under Goehler's instructions the machinists there had already made a punch and die, and they were finished before I came.

X Q. 46. How do you know they were made under Goehler's instructions before you went there? Did Mr. Goehler tell you so, or had you been there yourself before you left Mosler Safe & Lock Company?

A. 46. Before I went there I did not know it; Goehler told me so afterward. I was there the first time I went to leave Mosler Safe & Lock Company; it was about the time of high water when I wanted to quit work; there was water in the shop of Mosler, Bahman & Co. I then told Mr. Goehler that I was about to quit at Mosler Safe & Lock Company, and Goehler then said I could come whenever I wanted to. I afterward worked fourteen days at Mosler Safe & Lock Company and then quit, as I did not get the work I wanted.

142 X Q. 47. Did you in the first place go to Mosler, Bahman & Co. and ask for work, or did Mr. Goehler or some one else from that place send for you or offer you work at better wages than you had been getting at the Mosler Safe & Lock Company?

A. 47. I said to Goehler about three weeks before he went away, "if he went away I wouldn't stay long either;" neither Goehler nor any one from Mosler, Bahman & Co. sent for me or offered me work.

X Q. 48. Did Mr. Goehler tell you three weeks before he left the Mosler Safe & Lock Company that he intended to leave?

A. 48. Yes, sir; Goehler said he had prospects of being foreman either in a machine shop or safe factory. I told that fact to a fellow-workman, that if Goehler left I also would leave.

X Q. 49. Why did you not want to remain after Goehler left?

A. 49. Because the treatment of Mr. Hemler was too mean.

X Q. 50. What wages are you getting now or were you promised when you went to Mosler, Bahman & Co.?

A. 50. I got fourteen dollars per week when I went there and I now get fifteen; I was promised nothing; they told me you get fourteen now, and when I should get my hand in the work I would get piece work, so that I might earn from 18 to 20 dollars a week.

X Q. 51. Just before you were called upon this morning to testify you were called into the next room by Mr. Goehler and his counsel and had a consultation with them with the door between this room and that room closed, had you not?

A. 51. Yes, sir.

X Q. 52. Who else was present at that interview besides yourself, Mr. Goehler, and his counsel?

A. 52. No one else.

143 X Q. 53. Who acted as interpreter between you and Mr. Goehler's counsel?

A. 53. Mr. Goehler.

X Q. 54. The conversation, then, between Mr. Goehler and his counsel was in English, was it?

A. 54. Yes, sir.

X Q. 55. Can you state the substance of that conversation and how long it lasted—I mean the conversation as interpreted to you?

A. 55. Yes; it lasted about two minutes.

X Q. 56. State what took place—what it was.

A. 56. Goehler said that I must be witness; I should not tell more than I knew, and the truth, and what I could answer.

X Q. 57. Is that all he told you?

A. 57. That is all that Goehler told me in German, and English I do not understand.

X Q. 58. How many angle bars were cut out and bent round to form frames for safes within a week after the bending of the first bar you testified to?

Objection by Mr. James Moore, counsel for plaintiff.

(Question objected to for indefiniteness, and it does not state how such bars were cut or bent.)

A. 58. It took two or three weeks before the punch and die were complete. We could not bend any without the punch and die.

X Q. 59. Did you have the punch and die when the first one was bent?

A. 59. No, sir. I sawed that out by hand and filed it and drilled holes in it.

X Q. 60. How many were so cut out and bent within a week after the first one and before the punch was made?

A. 60. Only one—two in all.

X Q. 61. What was done with these two?

A. 61. The first was used for a safe, and the second was kept for a pattern until the punch was completed.

144 X Q. 62. What became of the first corners that you say were bent for Mr. Goehler?

A. 62. They were thrown into the scrap iron. They laid around for a few days.

X Q. 63. Did you see them thrown into the old iron and scrap pile?

A. 63. No, sir.

X Q. 64. Then how do you know they were thrown into the old iron?

A. They were thrown into a place where the offal from the blacksmith goes, and this is thrown every few days into the scrap pile, in barrels.

X Q. 65. When did you leave the Mosler Safe & Lock Company?

A. 65. About the 2nd or 3rd day of March, 1882.

X Q. 66. That was the last time you were there?

A. 66. Yes, sir.

X Q. 67. What time did you go to work for them in the first place?

A. 67. About 16th or 18th of August, 1881.

X Q. 68. How do you know that it was about the first week in November that you cut out and bent an angle bar like the model Goehler Exhibit No. 5?

A. 68. At first when I came to Cincinnati I boarded on Central avenue, and I quit there on the 22nd day of October, 1881, and went to another boarding-house, and I was there only about a week when I got this work; that's all.

X Q. 69. When did you first learn that you were to be called as a witness for Mr. Goehler in this case?

A. 69. I can't tell exactly.

X Q. 70. Tell as near as you can.

A. 70. Goehler told me about it already a month ago, that I would have to be a witness.

X Q. 71. And how often since have you and Mr. Goehler talked about it?

A. 71. I cannot state exactly.

145 X Q. 72. You do not need to state exactly; was it once or twenty times?

A. 72. It was, maybe, two, three, or four times.

X Q. 73. When you were working at Mosler Safe & Lock Company, who gave you directions about your work and what you were to do?

A. 73. Mostly Goehler.

X Q. 74. Who else?

A. 74. Mr. Hemler, in the absence of Mr. Goehler.

GEORGE THORWARTH.

JOHN HARDTLE, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and occupation or trade.

A. 1. John Hardtle; 47 years of age; reside southwest corner Vine and Findlay streets, and I am a safe-maker by trade.

Q. 2. State whether you have worked for the Mosler Safe & Lock Company of this city, when you went into their employ, and when

you left it, and what was the character of your employment while you were there.

A. 2. Yes, sir; I worked for them; I went into their employ in June, 1881, and I quit; I got sick last April, 1882, and I oiled up machinery, sewed belts, helped to put up the machinery and then kept the shop in order.

Q. 3. Did your duties require that you should visit the different parts of the factory, and how often would you be around the factory—every day?

A. 3. Yes, sir; my duties required that I should visit the different parts of the factory every day, and I would sometimes be around 4, 5, 6, times—sometimes 20 times a day, and more, too.

146 Q. 4. What is the fact with relation to how familiar you were with the different kinds of work going on in different portions of the factory?

A. 4. Well, I am well acquainted with every kind of work there, except the lock business.

Q. 5. What I mean is, did you know every day about what was going on in each department of the factory?

A. 5. Yes, sir; I did.

Q. 6. State if you knew of an angle iron being got up or invented upon which round-cornered safes were to be made; if you did, you can describe the character of such angle iron, and may refer to any of the exhibits, papers, or models that you find lying before you. State who first showed it to you and in what form it was—that is, was it a drawing on paper or a piece of paper cut out in form or was it a cut or bent angle bar.

A. 6. Yes, sir; I knew of such angle bar being got up or invented; it was formed like this piece here, Goehler Exhibit Model No. 5; Goehler showed it first to me on a piece of paper, and then he commenced to get angle iron and cut it out and tried it once.

Q. 7. You will please refer to Goehler Exhibits Nos. 2, 6, and 9, now before you, and state which, if either of them, represents the cut that Goehler showed you as you say.

A. 7. Here, Goehler Exhibit No. 9, is like what he showed me.

Q. 8. Now, when he showed you the cut like Exhibit No. 9 what did he say? State all that was said by each of you.

Objection by Mr. George Murray, counsel for defendant.

(Question objected to as calling for hearsay testimony and as being immaterial.)

A. 8. He told me that he wanted to try now to bend round-cornered hoops; then I told him "I don't think it will go as well in iron as it looks on the paper," and he said "Well, I'll try it

147 anyhow;" and then Goehler got an angle iron and got it straightened and give it to Mr. Thorwarth and showed him how to cut it out, and Thorwarth went to work at it and cut it out the way Goehler said. Well, they worked overtime that night; Thorwarth cut the angle iron out, and then next I saw them bent—that is, when they pretty near got done, and then the corners fitted just like this piece here, referring to Goehler Exhibit Model No. 5.

Q. 9. You will please state as near as you can the year, month, and day when this occurred.

A. 9. Well, I can't tell exactly when it was, but it was either in the last days of October or the first week in November, 1881.

Q. 10. How many such angle bars did you see bent of that kind at or about that time?

A. 10. I was only present at that one, but there were two bent that I saw.

Q. 11. Was Moses Mosler present at the one you saw being bent?

A. 11. No, sir; he was not.

Q. 12. What time in the day was this bar bent that you saw being bent?

A. 12. Well, sir, it was before noon, but I cannot tell the hour.

Q. 13. How did you know they worked overtime that night?

A. 13. Well, sir, me and Thorwarth always put up machinery together and we had an emery wheel to put up, and that day we didn't put any up, and he told me that he had to work overtime to cut out that round-corner angle-iron hoop.

Q. 14. But you didn't remain after regular working hours to see them cut that one out, did you?

A. 14. No, sir; I did not.

Q. 15. Do you know whether there was a safe made at or about that time that contained one of these angle bars?

148 A. 15. Yes, sir; I know that one of them was used in a safe.

Q. 16. Do you know when the safe was finished?

A. 16. Well, I don't know exactly; it got finished about a week after they made the hoops, but I can't say exactly.

Q. 17. Did you know of any round-cornered safes being made in that factory prior to that time upon a different principle? If you did you may state the character of their construction and illustrate by reference to the models upon the table before you if they answer your purpose.

A. 17. Yes, sir; I know of round-cornered safes being made at that time in that factory upon different principles. The first one was made like this here, Exhibit Model Mosler Round-Cornered Safe No. 1; they put small pieces in the angles like this, and then they put a round frame on, and then they made on like this, Exhibit Mosler Model Round-Cornered Safe No. 2. They didn't bend the angle iron as shown in that model, but took two pieces that joined at the round corner.

Q. 18. When you first went to work for that concern what did you work at?

A. 18. I set up fire-proof safes.

Q. 19. How long did you work setting up fire-proof safes?

A. 19. Nearly six months, and I got sick.

Q. 20. Did you while you were setting up fire-proof safes set up any of those round-cornered safes that you have described as being similar to the Exhibits Models Mosler Round-Cornered Safes Nos. 1 and 2?

A. 20. I did not, sir.

Q. 21. Did you ever have any conversation with Mr. Moses Mosler or Michael Hemler with reference to the invention of Goehler you have just described, or were you present when any such conversation took place? If so, state its substance.

149 A. 21. I had no conversation with either of them and I was not present when any such conversation took place.

Adjourned until 9½ a. m., December 14th, 1882.

Q. 22. About how many round-cornered safes, such as shown in the Exhibits Mosler Round-Cornered Safes Nos. 1 and 2, would you say were made by that concern prior to the time when Goehler made his invention?

A. 22. They were made a good while before Goehler made his invention; one of each was made; that is all I saw.

Q. 23. Would it have been possible for a round-cornered safe made upon angle bars cut and bent like the Goehler Exhibit Model No. 5 to have been made in that factory during the time you were at work in it and prior to the time when Goehler made his invention without your knowing of the fact?

A. 23. No, sir.

Q. 24. You state in answer 9 that Goehler first showed you his invention in the last days of October, 1881. I want to know how it is you recollect that as the time when Goehler first exhibited his invention?

A. 24. I have two things by which I know that it was at that time; the first is they got that big emery wheel that is set on the first floor now, that came down from the exposition about two weeks after closing, and then we had to set up that first—Thorwarth and I; that took us about over a week before it was in good condition, and the other reason is, the same day when Goehler bent that angle iron hoop round, at dinner time, when we were sitting together, I said to those men, "If Goehler would have found that out about four weeks sooner and had bent that angle iron hoop in the exposition then he would have got the premium." These are the two events I remember by.

Q. 25. When did the exposition you speak of commence and when did it close?

A. 25. It commenced the 6th of September and closed the 6th of October, 1881.

150 Q. 26. Well, was it after Thorwarth and yourself had set up the emery wheel that Goehler showed you his invention; and, if so, how long after?

A. 26. Yes, sir; it was afterward. Maybe it was two or three days; maybe shorter; maybe four or five days.

Q. 27. How long before Goehler left the employ of the Mosler Safe & Lock Company was it that you knew that he was going to leave, if you did know it? And if Mr. Goehler at that time made any statement as to when or why he was going to leave you will please state it.

A. 27. He told me about four or five weeks before that he was going to leave; he didn't say when. He says he would get a better

place in a machine shop as foreman, and that Hemler had been too rough with him all the time.

Cross-examination by GEORGE MURRAY:

X Q. 28. When Did Goehler leave Mosler's Safe and Lock Company?

A. 28. It was in February or March, 1882. I didn't keep any book memorandum.

X Q. 29. Is that as near as you can come to it?

A. 29. Yes, sir.

X Q. 30. Where are you working now?

A. 30. I am night watchman at Mosler, Bahman & Co.'s.

X Q. 31. How long have you been in the employ of Mosler, Bahman & Co.?

A. 31. Since the middle of June, 1882.

X Q. 32. Where did you first see the three models that are now on the table before you?

A. 32. The first time I saw these models, Mosler model round-cornered safes Nos. 1 and 2, was yesterday, here. When I came I saw them on the table, and I saw this one, Goehler Exhibit
151 Model No. 5, in the factory of Mosler Safe & Lock Company, but I ain't sure this is the very one I saw, but it is like it; that was about November, 1881.

X Q. 33. How much of that first angle bar was bent like Goehler Exhibit Model No. 5 when you saw Thorwarth bending it, as you say?

A. 33. The whole four corners I saw bent.

X Q. 34. Did you see Thorwarth or Goehler, or any one, bending the four corners of that bar, and were you present whilst all of the four corners were bent?

A. 34. Goehler and Thorwarth had two corners already bent when I came there, and I saw the third bent, and was there when they bent the fourth.

X Q. 35. Give the names of all the persons who were present when the third and fourth corners were bent.

A. 35. There was me, a couple of them blacksmiths—I don't know their names—and Hemler came there, and Goehler took the square to see if the angle-iron hoops were square.

X Q. 36. Are you sure that was the first bar so cut out and bent?

A. 36. Yes, sir.

X Q. 37. Are you also sure that there were no other persons present than those you have named?

A. 37. I am sure there were no others present.

X Q. 38. What time of the day do you say this was?

A. 38. This was before noon. I know it was after 9 or 10, before dinner time.

X Q. 39. How long was it after that angle bar was bent before the next one was cut out and bent?

A. 39. About a day.

X Q. 40. Did you see the next one cut out and bent?

A. 40. No, sir.

X Q. 41. When did you first see the second one that was cut out and bent?

A. 41. I saw it a couple of days afterward, standing in the blacksmith shop. It stood there for a good while, too.

152 X Q. 42. How long after this first bar was bent was it that the punches were made to cut out the corner?

A. 42. Over a month.

X Q. 43. How many bars were cut out by hand before the punches were made?

A. 43. Only two.

X Q. 44. Did you see any experiments performed, looking towards the bending of these angle bars, before you saw Thorwarth bending that first bar?

A. 44. No, sir.

X Q. 45. Was the bar bent the same day that it was cut out?

A. 45. Yes, sir.

X Q. 46. And was it bent the same day that Goehler showed you that paper model?

A. 46. Goehler showed me the paper in the morning, and in the afternoon he got the angle iron, got it straightened and cut out and worked overtime on it, but they didn't get everything cut out before the next day, in the morning; they didn't bend it that day, as they didn't get done; I mean the day he showed me the paper.

X Q. 47. What emery wheel were you and Thorwarth setting up when he was taken away to work on this angle iron?

A. 47. We were setting up that big one that came down from the exposition.

X Q. 48. How near had you completed the setting up of that big emery wheel when Thorwarth was called away to cut out this first angle bar?

Objection by James Moore, for plaintiff.

(Objected to as misrepresenting the witness' testimony.)

A. 48. If he did get called away for that, I don't know it; if he was called away, it was in the last days of October, 1881, but

153 still we got done with that emery wheel the last days of October, 1881, and then afterward he had to work on that angle iron.

X Q. 49. Then what do you mean by your answer to question 13, in which you say, referring to the day that that angle iron was bent, that you and Mr. Thorwarth had an emery wheel to put up that day, and he told you that he had to work overtime to cut out that round angle iron hoop?

A. 49. That was the emery wheel on the third floor.

X Q. 50. Did you make full time the last week of October or first week of November, 1881, at the Mosler Safe & Lock Company?

A. 50. If they worked all the time, then I worked full time, and I believe I made overtime in those two weeks, if they look at their books.

X Q. 51. Did you know of a punch and die being missing from the Mosler Safe & Lock Company at that time?

A. 51. Yes, sir.

X Q. 52. What time was it, and what became of it, if you know?

A. 52. After Thorwarth went away Hemler asked me if I did not know where that punch had gone to; it was in March or April; I don't know exactly, but about that time, 1882; I told him I don't know anything about it.

X Q. 53. Did you then or do you now know what became of that punch and die?

A. 53. No, sir.

X Q. 54. Were you present yesterday when Mr. Thorwarth was giving his testimony?

A. 54. I was present in the afternoon, from half past two until he got done.

X Q. 55. Upon what floor of the factory was it you saw Thorwarth bending that angle bar?

A. 55. That was on the ground floor, in the same room as the blacksmith shop is and burglar doors are made.

X Q. 56. When Goehler told you, about four or five weeks before he left, that he had an offer as foreman of a machine shop, did he tell you whose machine shop it was?

154 A. 56. Yes, sir; but I forgot the name now.

X Q. 57. Did he say he had an offer as foreman of a safe factory, also?

A. 57. Yes; about two or three weeks after that—a couple of weeks before he left.

X Q. 58. Did he tell you whose safe factory it was?

A. 58. Yes, sir; he said he would be down there with Mosler, Bahman & Co.

X Q. 59. Did he tell you what Mosler, Bahman & Co. wanted him there for?

A. 59. No, sir.

Re-examination:

Q. 60. From the time that Goehler showed you that paper model like Goehler Exhibit No. 9, one day early in November, 1881, until you happened around when Goehler and Thorwarth were engaged in bending the angle iron, as you have described, you did not know, or did you, what Goehler was doing with reference to putting his invention into practicable form?

A. 60. No; I did not.

Q. 61. May it not have been, upon closer recollection of the matter, that the first angle iron was bent as you have described, but upon the same day that the paper model was exhibited to you?

Objection by Mr. Murray.

(Question is objected to as leading and not proper re-examination.)

A. 61. No, sir; on the following day.

Q. 62. You have stated that there were some blacksmiths in addition to Goehler, Thorwarth, and yourself present at the time of bending that angle iron; now, did you have any conversation with either of these blacksmiths at that time or when you saw the paper

about the probable success of Goehler's invention? If so, state
155 what that conversation was and give the name of the blacksmith, if you know it.

Objection by George Murray, counsel for Mosler.

(Objected to as immaterial, the witness having already stated that Mr. Mosler, the inventor of the angle iron so bent, was not present at that time.)

A. 62. I had a conversation with one of the blacksmiths with the name of "Stoeckle" after Goehler showed me that paper and asked me "if I saw that paper, too," and I told him "yes," and I asked him "what he thought about it," and he said "he was afraid that it won't go in iron like it looks on paper;" that was all the conversation we had about it.

Q. 63. Did you ever, while you were in the employ of the Mosler Safe & Lock Company, hear Moses Mosler say that he was the inventor of this mode of cutting and bending an angle bar to make a round-cornered safe, or did you ever hear any person around the factory say that they believed that said Mosler was such inventor or had anything whatever to do with it?

Objection by George Murray for defendant.

(Question objected to as not proper re-examination and as immaterial.)

A. 63. No, sir; neither one or the other.

Recross-examination:

X Q. 64. Did you ever hear Mr. Mosler say anything at all about this invention?

A. 64. No, sir.

X Q. 65. Did the blacksmith you conversed with give any reasons why the paper model would not work if the same cut was made in iron?

A. 65. He did not, sir.

JOHN HARDTLE.

Adjourned until 1½ p. m. to-day.

156 GEORGE J. H. GOEHLER, being first duly sworn, deposes and says, in answer to interrogatories:

Q. 1. Do you speak English sufficiently well to answer the questions that may be put to you?

A. 1. I speak English, but I don't believe I can speak plain enough so that I can make myself properly understood.

Whereupon Mr. Walther, who has been sworn as interpreter, is called to interpret the witness.

Q. 2. State your name, age, residence, and occupation or trade.

A. 2. My name is George Joseph Hubert Goehler; I am 36 years old, and I am a locksmith by trade, and reside No. 36 Mary street, Cincinnati, Ohio.

Q. 3. Are you the Goehler, party to this interference?

A. 3. Yes, sir; I am the party.

Q. 4. State whether you worked for the Mosler Safe & Lock Company, when you went there, when you left, and where you have worked since.

A. 4. Yes, sir; I worked for the Mosler Safe & Lock Company on two different occasions; the first time I cannot definitely state when I went there; it was in 1879, I believe, and I left, I believe, about three-quarters of a year afterward, and then went back in midsummer of 1880, and quit between 15th and 20th of February, 1882, and I have worked since that time for Mosler, Bahman & Co.

Q 5. In what capacity were you employed by Mosler Safe & Lock Company, and in what capacity are you now employed by Mosler, Bahman & Co.?

A. 5. At Mosler Safe & Lock Company, on first occasion, I made boxes, skeleton safes, and express boxes, and on the second time I was appointed to the position of foreman by Moses Mosler, and I am foreman at Mosler, Bahman & Co.

157 Q. 6. If, while you were in the employ of the Mosler Safe & Lock Company, you made any improvement or invention in cutting and bending angle bars as a means of constructing round-cornered safes, you will please state just what you did looking to that end, describing the different efforts, if any, made by you, the different steps in progress toward the invention, and the time when you made these different efforts, according to the best of your memory.

A. 6. Yes, sir; I made such. I believe it was, to the best of my memory, on or about the 3rd day of November, 1881; it was in the morning that I called to my side a workman by name of Thorwarth and ordered him to bring a piece of angle iron about twelve inches long, and taking a slate pencil I made a drawing on the angle iron, drawing the lines with my foot rule, similar to Goehler Exhibit No. 3, and told him to call me when he had cut out the angle; he called me and we heated said angle and tried to bend it, in order to make the round corner. It was unsuccessful. I then ordered him to bring me another piece of angle iron and I showed him again with the slate pencil and ordered him to cut out the angle similar to Goehler Exhibit No. 8, and we heated that piece of angle iron and tried to bend it into a round corner, but as we bent it we couldn't get these lines, the angle lines, to meet; the iron bulged out here in the joint and it wouldn't curve right; it was not what I wanted to arrive at, and we made no further attempts that day, owing to the pressure of work in the factory, especially for that man Thorwarth. In the evening, as I believe, of between the 3rd and 4th of November, I thought over the matter at home and made a picture in my memory, which I surely believed could be put into practical use and succeed. On the 4th of November, as I certainly believe, of the year 1881, after I had seen the pressure of work, which usually is finished by 9 o'clock, subside, I again hunted up Thorwarth and explained to him more definitely my plans, and invited him

to go with me to the office of myself and Mr. Hemler
158 the superintendent, and took a piece of paper and on it marked with lead pencil—it was thick drawing paper—the drawing. I made these two lines marked "*d*" and "E E," and then marked the lines "*a a*" and "*b b*;" only the lines "*b b*" were curved as I marked them in lead pencil on this drawing. (The drawing referred to by the witness in this explanation being Goehler Exhibit No. 1.) Then I cut it out and rubbed out the lead-pencil marks I had made; the paper on which this was done was of the size of about 6 to 8 inches long and about 5 inches high; and Thorwarth remarked, "It will go," and we were both happy over the result. Mr. Thorwarth went back to his usual working place and I said I would show it to my superintendent. I went around in the shop, but couldn't find him, and I then went back to Thorwarth and said I couldn't find the superintendent and would go to see Mr. Moses Mosler. I went to the office, asked for the superintendent, and Mr. Moses Mosler answered me from the counter, where there is an opening, no. I had the paper as drawn in my hand and he asked me what I wanted with the superintendent. I answered him, I have found out something that I want to show you. He said, Let me see it; and I explained the same to him. He then told me to immediately put it into practical use. Mr. Mosler at the same time told me that I should inform him as soon as the angle iron was ready to be bent. I went out then and gave Thorwarth the orders I had received from Mr. Mosler; I then laid out the hoop and told him to work it out and when he had finished to let me know, and he called me just as he had finished; and as I myself was not satisfied of its practical working in iron, as I was not sure of it, and was not certain of its practical success, I then omitted to call Mr. Mosler and went myself and assisted Thorwarth in bending the hoop, and I then informed Mr. Mosler that I had bent a hoop and was satisfied with the result. Mr. Mosler said, "I told you to let me know when you were ready; I wanted to be present." I said he should excuse me, I would bend
159 another, would make another attempt, and would surely invite him to be present. As we had bent the first hoop, I am not positive whether the hoop was complete or not. Mr. Hemler came. I explained to him what we were about, and told him I had hunted him in order to inform him before Mr. Mosler, and told him that I had instructions from Mr. Mosler. I explained to him just how it worked and how we came to it, and then he left. I again gave Thorwarth orders to get another angle iron, and laid it out for him and ordered him to work it out. Thorwarth worked at it then, and as it was near quitting time he came to me and said the hoop was not yet done. I said, It don't make any difference; he should continue on working; that there was not much to be finished; that Mr. Mosler would be present also. By the time we got through it was dark, so we had to have lights—two lights. I went into the office and informed Mr. Mosler that the hoop was ready. He said, "Goehler, I can't get away; bend away, I will be there soon." I don't know exactly how many corners were bent when Mr. Mosler

came, but am certain that he saw some of the corners bent while we were bending them. Mr. Mosler then said that he believed it would work. The next day (we left the hoops lying right where they were) I saw Mr. Moses Mosler and Michael Hemler, the superintendent, go to the blacksmith shop, where we on the day before had worked out that angle iron and bent it into a frame, and arrived there a little sooner than I did. On my arrival Moses Mosler and Mr. Michael Hemler, the superintendent, stood before the hoop and examined. They hadn't it in their hands, but looked down upon it. Mr. Moses Mosler then asked Mr. Hemler, "Whose find-out is that?" or "Who found that out?" And Mr. Hemler answered, "It is nobody's find-out." Mr. Moses Mosler said, "Why ain't it anybody's discovery" "That ain't what I want to know." Mr. Hemler then said, "That has to be so; it couldn't be otherwise." Then I got mad, because Mr. Hemler, whom I had always considered as a man and a friend and to whose assist-
160 ance I had always come, talked that way and I left them both and don't know how long they staid there. I then bethought myself what I under the circumstances and such treatment ought to do in order that I might justify myself. I came to the conclusion to go myself to Mr. Moses Mosler and hear what he might say out of his own mouth concerning the statements made by Hemler. I went to the office when I had come to that determination and did not find Mr. Mosler there, and I met Mr. Charles Glaeser, a young clerk in the office, and asked him to do me the favor to tell Mr. Moses Mosler that when Mr. Mosler had finished his business in the evening I wanted to speak to him, and he promised me that he would do so. At quitting time, all the hands having gone home, I don't know whether I was called or whether I went of my own accord into the office of Mr. Mosler, and as I came in Mr. Mosler said, "You wished to speak to me," and asked whether it was upon any important matter. Thereupon I answered, "So far as I am concerned, yes." Mr. Mosler said, "I am going home soon and you can then there tell me what you have to say." We then spoke a few words about other matters, ordinary subjects, and the other gentlemen having gone away there remained Moses Mosler, Wm. Mosler, Mr. Greenleaf, a member of the firm of Sargent & Greenleaf, large manufacturers of combination and other locks, of Rochester, New York, and myself. We four left the office together and went up Elm street; Mr. Greenleaf and Mr. Wm. Mosler walked together and Mr. Moses Mosler and I followed. I says, "Mr. Mosler, what did you think of the answer Mr. Hemler made you to-day?" Mr. Mosler said, "That is why I asked him, Goehler; I wanted to hear his answer; be contented; I will make it all right." As we got up to Fourth and Elm Mr. Wm. Mosler and Mr. Greenleaf turned to the west and Mr. Moses Mosler intended to go with me toward a car, I believe, but changed his mind and followed the other two, and I went home. Later, it might have been in the middle of December, 1881, Mr. Moses Mosler said
161 to me I should get ready to go with him to the patent office in order to properly take out the patent for the round corner, this invention, adding that he did not want to swear at random,

and I said yes; I would go with him, thinking at the same time if I went with him before I should swear or sign anything I must first be satisfied about his expression "that he would make it all right," etc. In the afternoon, when I called and asked him if he was ready to go to the patent office, he answered me, I have had a consultation (I cannot say whether he said with his lawyer or with a patent agent), and this gentleman whom he had consulted had said that it was not necessary for him that I should be present at what was to be done. I think now I have answered the question put to me.

Q. 7. Please take Goehler Exhibit No. 1 and put the lines that you have described as made by you in pencil into dotted lines in ink.

A. 7. I have done so.

Q. 8. In answer 6 you say that Mr. Mosler wanted you to go to the "patent office." Did you understand him to mean that he wanted you to go to Washington or to the office of a patent solicitor in Cincinnati?

A. 8. I couldn't have understood him to mean that we were to go to Washington. I had on my every-day clothes, and must have understood that we were to go somewhere in the city.

Q. 9. Had you ever spoken with any of the officers or stockholders of the Mosler Safe & Lock Company or with the superintendent, Michael Hemler, prior to the fourth of November, 1881, about the desirability or advisability or any other matter relating to the getting up of a mode of cutting angle iron so as to bend it to form a round corner for a safe?

A. 9. Never before the 4th of November, but often after the 4th of November, 1881.

Q. 10. That is, if I understand you, you never had any conversation with either of them upon that subject prior to
162 the time when you went with the paper to show it to Michael Hemler, and did actually show it to Moses Mosler as described in your sixth answer. If I am wrong in this point out wherein.

A. 10. I believe I sufficiently answered that in the preceding answer.

By agreement of parties the taking of this deposition is adjourned until 10 o'clock, December 15, 1882.

Question No. 10 repeated by interpreter.

A. 10. No; I never spoke to anybody on the subject prior to that time, and I have no correction to make with the question.

Q. 11. You have stated that on the morning of the 4th of November, 1881, you did not go near Thorwarth or exhibit your invention in the form of cut or drawing to any one until after 9 o'clock. State the reason of this.

A. 11. I may have been with Thorwarth on the morning early, but can't remember having spoken to him prior to that time, for the simple reason that the time from 7 to 10 or 7 to 9 I mostly used to go through the three stories, blacksmith shop, burglar department,

and fitting-room, and very often the paint shop in order to see how the work of the previous day had proceeded and to find out what orders were necessary so that for the rest of the day the work could proceed.

Q. 12. Did you permit your experiments towards completing that invention to in anywise interfere with the performance of your regular duties for which you were employed and paid?

A. 12. I don't think the firm lost anything by it, for I always allowed the regular duties to be first performed, and besides I never neglected my duties; for if I did not get through, as, for instance, if drawings were necessary, I did the work at home.

Q. 13. In reference to these round-cornered safes that were
163 made at the Mosler Safe & Lock Company prior to November, 1881, similar to Exhibits Model Mosler Round-Cornered Safes Nos. 1 and 2, how many such safes were made, if you know, and when they were made, and who made the first of them?

A. 13. The Mosler Safe & Lock Company was formerly at No. — East Pearl street. Whether any were made there I cannot say, but doubt it for the simple reason because it requires a machine or a certain arrangement in order to bend this mantle for the round corners, and I helped set up the machine with a machinist by the name of Eberhardt, who is now foreman at Hall's, which machine was for the purpose of bending that iron mantle. The first safes that were made with the mantle or covering I made myself; the frame was made just as this (Mosler Model Round-Cornered Safe No. 1 referred to by witness), with little angle pieces, and this so-called frame sat deeper, about a quarter of an inch, and was covered partly with moulding. According to my best recollection, about two dozen were made and went to South America and underwent a different filling on account of the moistness of that climate. I desire to add, if these were the first ones, I made them.

Q. 14. How many of these were made, if you know, during the year 1881?

A. 14. From 3 to 6 were made without mouldings during that year.

Q. 15. Referring to the first safe that was made upon an angle bar or angle bars similar to the model, Goehler Exhibit No. 5, did it have any moulding on?

A. 15. It had none.

Q. 16. Who made that safe?

A. 16. The safe went through its regular course in the factory, but Louis Gerwe had the most to do with it; he had to put on the covering and feet, and this determines the fact of its being a safe;
I believe it was rather after than before the 15th of Novem-
164 ber, 1881, and the man who made it had it by the day and not by the piece, as is the custom in that factory.

Q. 17. If you signed any paper before leaving the Mosler Safe & Lock Company you will please state who requested you to sign it, all the circumstances connected with your signing it, and, if you have not a copy of it, state why you did not get a copy of it, and state its contents, as far as you are able to do.

A. 17. I signed a paper, and the circumstances were as follows: As I informed Mr. Mosler that I was about to leave my position and exchange the same for another he was not particularly elated over it; the matter passed over about two or three days until I definitely declared that I was going to leave; Mr. Mosler offered me a paper to sign; I refused to sign it, as I could not understand it and as I was unacquainted sufficiently with the English language, especially when it is written; Mr. Mosler then said "there was nothing wrong in it;" I could take it to a lawyer and have him examine it; in course of half an hour we spoke again about the paper, and I asked to take the paper to have it examined; the paper was refused me for that purpose, and a clerk in the office by name of Charles Glaeser was requested to go with me into the adjoining stock-room and interpret the paper in German to me; the young man tried to do it and made some witty remarks, but did not succeed in translating it, and I refused to sign it for the moment; during this time, whilst the paper was presented to me the first time, the superintendent of the factory, Michael Hemler, Moses Mosler, Julius Mosler, and I were present and had considerable conversation as to why I was wanted at Mosler, Bahman & Co.'s; and Julius Mosler, who is quite hot-headed, showed by his expression that if I went to Mosler, Bahman & Co. and made the arrangements there that were made here that they could by law put me in prison; I went back to the factory to my usual work, and Mr. Hemler then came to me and spoke to me again about my going away and tried everything to keep me there; later, Moses Mosler came to me and we agreed that I should stay, and in the evening as I was going home I signed that paper; the contents of the paper, as I understood then and still understand them, were that I should testify that Moses Mosler always would endeavor, according to his best ability, to introduce the improvements in his factory.

Q. 18. What became of that drawing and cut of the mode of cutting the angle iron in question which you exhibited to different parties on the morning of the 4th of November, if you know?

A. 18. I used that paper to lay out the first and second hoop; what became of it later I do not know; so far as the drawing Kech testified about is concerned, I believe I made that later for the purpose of making the punch and die, and I did not follow it up to see what became of it; and it was news to me that Kech testified to that drawing only, as I thought he was in the neighborhood at the bending of the first two frames, and that he could testify to that fact.

Q. 19. When, as you say, Moses Mosler came to you in the factory, as you have described in answer 17, after your conversation in the office in reference to your leaving the employ of the company, what inducements, if any, did he hold out to you, or what reason, if any, did he give for the desire that he had that you should remain in the employ of the company?

A. 19. Mosler, Bahman & Co. had offered me $18.00 a week, and Mr. Mosler then offered me $19.00 a week, and asked whether it was merely a money question which induced me to leave; after I

had complained of Michael Hemler's treatment as one of the reasons why I wanted to leave he said he had talked with Mr. Hemler in reference to the matter and it would certainly go better in the future; that is all.

Q. 20. After you made application for patent for the invention here in controversy how much did you talk about it with the
166 various persons whom you expected to testify or who have thus far testified in this case, and what was your habit in this regard?

A. 20. I talked with all the witnesses who have testified, but only after I found out that it was necessary to have witnesses. I thought over what would be required as testimony and hunted up and talked to the witnesses, with the exception of one who came to me, and only after he had a subpœna. This witness came to exchange some books he had borrowed and told me you, Mr. Murray, had talked with him in your office, probably being called there by Mr. Moslér. I, of course, informed myself of what was necessary; every one would do the same thing.

Q. 21. Is it or not the fact that some time after this interference was declared you had made it a rule to avoid talking upon the subject with any person that you thought might be called as a witness, because you thought you had no right so to do; and that you only spoke to them as to what they knew after being advised and urged so to do by the attorney now examining you?

Objection by Mr. Murray, counsel for defendant.

Objected to as leading and suggestive of an answer different from what the witness has already testified to.

A. 21. I never made it a business to talk with any one about it until I gave Mr. Moore the names of the witnesses I wanted subpœnaed, and he asked me what they would testify to, and I told him I did not know myself what they would say, and he advised me to place myself in communication with those persons in order to ascertain what these people knew of the matter, and many of them testified to more on the stand than I actually thought they had knowledge of.

Adjourned until 1½ p. m. to-day.

Cross-examination by Mr. MURRAY for defendant:

X Q. 22. Is between the 15th and 20th of February of this
167 year, as near as you can come to, the time when you left the Mosler Safe & Lock Company and went to work for Mosler, Bahman & Company?

A. 22. That is as near as I can come now; I didn't consider it of so much value, or I could have ascertained it exactly; the books of Mosler, Bahman & Co. would have made it exact for me.

X Q. 23. How long was it after the time you signed the paper you have spoken of?

A. 23. I believe I signed that paper on a Saturday. The next week I worked Monday, Tuesday, and Wednesday morning, and

the balance of week I took for myself, and I believe I began working for Mosler, Bahman & Co. the following week.

X Q. 24. Do you mean that you worked the Monday, Tuesday, and Wednesday morning of the following week after the signing of that paper for the Mosler, Safe & Lock Company, and then it was the week after that again you went to work for Mosler, Bahman & Co.?

A. 24. Yes, sir.

X Q. 25. And how long after that time (the time you went to Mosler, Bahman & Co.) was it that you signed your application for a patent for the invention which is here in controversy?

A. 25. During the three days that I did not work in that week I gave Mr. Layman orders to work out the application, and I think the application went off that week.

X Q. 26. Who went with you to Mr. Layman when you made your application for a patent?

A. 26. A Mr. Hintz, Julius C. Hintz.

X Q. 27. The angle iron that you bent similar to Exhibit No. 8 you say you heated and tried to bend it. Were the other angle irons that you bent which were cut out similar to Goehler Exhibit No. 1 also heated before they were bent?

A. 27. No; they were bent cold; one of them was, as has
168 been stated heretofore, bent after quitting time, and there was no fire there then; the other one was bent cold also.

X Q. 28. Who told you to make experiments to ascertain whether an angle iron could be cut out and bent like Exhibit Goehler No. 5?

A. 28. No one. You will notice here, between these two models (Exhibits Mosler Model Round-Cornered Safes Nos. 1 and 2), an advancement in the mode of construction; here (referring to No. 1) are two little angle pieces, and if the angle was longer more angle pieces would be required, and here (referring to No. 2) the angle iron is bent, and if extended, no new pieces or small pieces, like in No. 1, would be required, and every mechanic can see that it would be a better job. As a mechanic, the idea forced itself upon me that as the angle iron on the inside could do the whole service if properly made why throw away the mantle or covering? Why not let the angle iron do the whole work?

X Q. 29. And that, you say, was what suggested to you to cut out an angle bar to form the front and back frame of a round-cornered safe; or, is that what you mean?

A. 29. Yes, sir.

X Q. 30. How long had they been making round-cornered safes constructed like the Exhibit Mosler Round-Cornered Safe No. 2 before the time you claim to have made the invention represented by Goehler Exhibit No. 5?

A. 30. The time I cannot give; there were not many of them made. I believe that at the time I made the angle bar, as in Exhibit Goehler Model No. 5, there was one made according to Exhibit Mosler Model Round-Cornered Safe No. 2 in the shipping department; it hadn't this angle inside made by the angle iron, and the

cement would eat through in both models and all corners would show the effect of it.

X Q. 31. Wouldn't the cement go through in model Exhibit No. 2 equally as well as in Exhibit Model No. 1?

A. 31. In No. 2 it would not work itself through so easily as in No. 1; it can work itself through in No. 2 in the corner easier than at any other place.

169 X Q. 32. Under whose directions were the models, Exhibits Mosler Round-Cornered Safes Nos. 1 and 2, made?

A. 32. They were made under my directions, but he who made them was not under my control.

X Q. 33. Were they made as you directed they should be made?

A. 33. No. 1 was made exactly as I directed. No. 2 was not so made, but I did not see it until they were both finished, or I would have had No. 2 different.

X Q. 34. In the safes made by the Mosler Safe & Lock Company like the Exhibits Mosler Round-Cornered Safes Nos. 1 and 2 how was the outer sheet or covering bent?

A. 34. They were bent by a machine, as long as the safes were made. The machine was fastened to a post and stood in the blacksmith shop.

X Q. 35. Was that machine there when you first went to work for the Mosler Safe & Lock Company?

A. 35. No, sir; I said this morning when it was made.

X Q. 36. When was it made?

A. 36. When I worked there the first time; Tool-Maker Eberhardt made it and I helped set it up.

X Q. 37. I mean, was it made while Hemler was foreman of while Burkmeyer was foreman?

A. 37. It was made while Burkmeyer was foreman, and was in use as long as the firm of Mosler Safe & Lock Company occupied the premises of Mr. Dodds on Pearl street. When the firm removed to its own factory it remained in the cellar for a some time, and by chance an order for such a safe came in, and I told Hemler, the superintendent of Mosler Safe & Lock Company, that in order to get such a safe ready it was necessary that a machine that was then in the cellar, of whose existence Hemler knew nothing, would have to be set up, and thereupon I ordered Tool-Maker Herman Schmidt to fasten the machine to a post designated by me, situated in the blacksmith shop.

170 X Q. 38. Is that the machine you and Eberhard set up?

A. 38. Yes, sir; one and the same.

X Q. 39. Before you cut out the paper model, similar to Goehler Exhibit No. 2, and exhibited it to some of the witnesses who have testified in your behalf, had Mr. Hemler, the superintendent, cut out any paper models or paste-board models representing how an angle bar might be bent to form a frame for a round-cornered safe and exhibited such model or models to you?

A. 39. Never; and I believe that to this day he is not able to cut the same out without practicing beforehand.

X Q. 40. Did he ever make any attempt to show you how any cut in an angle iron should be made so as to permit it to bend so as to form a round corner for a safe?

A. 40. No; or I would never have had to make attempts myself.

X Q. 41. Did he never tell you to cut out an angle bar, or try to cut out an angle bar, so that it would bend to form a frame for a round-cornered safe?

A. 41. No, sir.

X Q. 42. Did you know, before you cut out the paper similar to Model Exhibit Goehler No. 2 that Mr. Moses Mosler or Mr. Hemler desired to make safes having frames made of angle bars cut out and bent with rounded corners?

A. 42. No, sir; I never was admitted to such conferences—I never was invited—and know to this day of no such desires.

X Q. 43. Then what did you mean by stating to one of the witnesses, Mr. August Schultze, who has testified in your behalf, when you exhibited the model to him, by the expression, "I think I have it now; the way they are going to make the safes?"

A. 43. Above all we must consider here that I spoke with Schultze in German, and that whenever a foreman works in a shop he
171 uses the expression "we" and considers himself as a party in interest, and consequently I could not have meant how these or those were going to make them, and as the experiment of the day before proved to be a failure I had the right to say I had it "now," and that Schultze had knowledge of the experiments the day before; his own expressions shows it, where he says that I had taxed my brain with it.

X Q. 44. Then you simply meant by "we" yourself, and it was perhaps a form of expression you had acquired while editing a paper, for I believe you occupied such position, did you not?

A. 44. If, for instance, a laborer asks for more wages and I answer him, "The present condition of our business don't permit us to pay more," or if I reduced the wages of a workman and used the expression, "We won't pay any more in future," and Mr. Murray was the proprietor, would he not be satisfied with that use of "we?" Consequently I did not mean myself when I said "we;" I correspond partly yet for a paper and I have edited one.

X Q. 45. Did you have anything to do with the employment of the hands or fixing their compensation while you were in the employ of the Mosler Safe & Lock Company?

A. 45. If workmen were engaged or any were necessary I consulted Mr. Hemler, and if he or I had a workman we knew of we got him. The wages were fixed every Tuesday morning; Mr. Hemler took up the time of the piece workers and I for the day workers. The wages of the piece workers were regulated generally by our consulting, and as to the day laborers the superintendent always had to give his consent.

X Q. 46. What did you mean when you said to Mr. Schultze about a month before the time you showed him the proper model cut out like Exhibit Goehler No. 2 and the time he complained to you about

the labor of making safes or express boxes made upon round-
172 cornered angle-bar frames cut out like Goehler Exhibit No. 3 and welded at the corner that "that kind of angle bar, so cut out, bent, and welded, would be soon abolished?"

A. 46. Firstly, I don't believe I made any such remarks, and, secondly, it is not the duty of a foreman to always tell his workmen what he thinks, and Schultze is known as one who would exact the highest wages for his labor, and if I used the expression it was because Schultze having piece work earned more thereby than day laborers, and I made the remark, if I did so, only in order to have him remain contented with his earnings for that safe.

X Q. 47. Did you make the remark, and if you did make it was it for the reason you have stated?

A. 47. I don't think I made it and if I did it was only for that object.

X Q. 48. How long before you left the Mosler Safe & Lock Company had you negotiated with or been offered a position by Mosler, Bahman & Co.?

A. 48. About three or four weeks prior I met in a saloon the present business manager of Mosler, Bahman & Co., the saloon keeper, Christ Endes, being present, and I informed him that if a position could be found where I could better myself I would make use of the same, and if he could assist me in that direction I would be obliged to him.

X Q. 49. Who is the present business manager of Mosler, Bahman & Co.?

A. 49. Mr. Hintz, so far as I know.

X Q. 50. Did Mosler, Bahman & Co. send for you or did you meet Mr. Hintz accidentally?

A. 50. This meeting was accidental.

X Q. 51. Were you sent for subsequently?

A. 51. Yes, sir; he sent for me and I sent for him while we were negotiating.

X Q. 52. Do you recollect having made an appointment with Mosler, Bahman & Co. or some one connected with that firm
173 just before you left Mosler Safe & Lock Company and communicating that fact to Mr. Moses Mosler and asking his permission to go off during working hours to keep that appointment?

A. 52. Yes, sir; I remember that very well.

X Q. 53. Did Mr. Mosler at that time offer you any inducements to remain with the Mosler Safe & Lock Company, and did he not request you that if you took a position with Mosler, Bahman & Co. that you would give him a few weeks' notice in order that he might get some one to take your place, and did he raise any objection to your keeping the appointment?

A. 53. The question put is very agreeable to me; Mr. Moses Mosler may have offered me inducements to remain; I don't want to dispute that and I don't want to deny that he wanted me to give him notice of my leaving, but there is an incident to be recalled, and that is that Superintendent Burkmeyer told me that under orders of Moses Mosler he must notify

me to at once give up my position, and for reasons that had no foundation, and where they did not consider that I was the father of a family; and at a time when I was negotiating with Mosler, Bahman & Co. I was the owner of something which I had a right to sell and get the best price for it, and consequently I had the right to gain time by taking the position they offered, as it might be accepted by another; Mr. Mosler raised no objection; on the contrary, was very accommodating.

X Q. 54. Did you at that interview agree with Mosler, Bahman & Co. as to what your compensation should be, and was one of the considerations of your employment by them that you were to make the same kind of round-cornered safes that were being made by the Mosler Safe & Lock Company?

A. 54. I wish first, if it is agreeable, before answering that question, to consult with my attorney.

To which Mr. Murray, for defendant, objects, and insists that the question be answered before consultation as requested.

Statement by J. M. MOORE:

174 (Counsel for Goehler desires to say, as instructions to him, that if he has doubts as to whether he ought to answer the question—that is, as to whether the answer involves information that he doubts whether it is pertinent to the case and may comprise his relation or the rights of others, he is entitled to consult his attorney before answering.)

(Objection by Murray.)

(Counsel for Mosler refuses to surrender the witness and insists upon an answer before consultation, and if the witness desires before answering the question to *each* his attorney any questions he insists that it must be done in the presence of the officer taking the testimony and placed upon the record. Counsel for Goehler asks the witness to state upon the record whether, in view of the foregoing instructions, he desires to consult his attorney.)

Witness, without consulting, desires to answer and says:

A. In this interview nothing was said about discoveries or the like; I knew before why I wanted, and what I told Mr. Mosler on my return was more a compilation of what I had talked of with Mosler, Bahman & Co. in the past than what happened at the time; we spoke of the manufacture of round-cornered safes, but that was not the main subject of our conversation.

Adjourned until 9½ a. m., December 16, 1882.

And the witness being requested to continue to answer the last question, the same is repeated and witness says:

A. My wages were to be $18 per week; whether it was fixed at that interview or previously I cannot state; I so understood at that time, but I will not say that they were to be of the same kind; this was one of the considerations.

X Q. 55. Was the offer of $18 per week subsequently increased by Mosler, Bahman & Co. before you went into their employ?

A. 55. Yes, sir; my wages were increased before I went there.

175 X Q. 56. Can you state the time and place that increase was offered to you, and under what circumstances?

A. 56. I cannot exactly state the time, but if I am not mistaken it was on the Monday or Tuesday preceding the Wednesday I left Mosler Safe & Lock Company, at my house. The business manager, the superintendent, and a stockholder, Mr. Naeher, paid me a visit and we agreed upon the fact that I was to work for them.

X Q. 57. Then, if I understand one — your former answers, you had determined at the time you promised Mr. Mosler that you would not leave without giving him reasonable notice; that you in fact were determined to leave without such notice in order to punish him for something Mr. Burkemeyer had told you; am I right?

Objection by Mr. Moore.

(Question objected to as misrepresentation of the witness' testimony.)

A. 57. At that time I did not think of any punishment; I only brought that up because they want here to throw up to me what they had done in a former instance. If I had wanted to punish them I would have had ground to do so, as Mr. Burkemeyer, when I expressed my doubt as to his having any orders from Mr. Mosler to discharge me, offered to go with me before a 'squire and swear that he had such orders from Mr. Mosler. You are partly right and partly wrong.

X Q. 58. In what part am I right and what part am I wrong?

A. 58. I answered the last question as I did because I cannot distinctly remember and certainly under what impressions I left there. As I informed my wife that I was going to stay at my old place, she ridiculed me and said that I needn't say anything more to her about the ill-treatment on the part of Hemler, if I, now that I had an opportunity for a good position, did not reach out for it.

176 X Q. 59. I simply wished to know whether or not you had any feeling against Mr. Mosler for any ill-treatment or supposed ill-treatment he had shown toward you, and if that had anything to do with your leaving without giving him the notice you had promised or led him to believe he might expect, or whether your leaving was a question of dollars and cents merely.

A. 59. I look at a person always from both sides: 1st, as a person as we all are, and as such I look upon him as a fine man, against whom I have no ill-feeling, and, 2nd, as a business man in which I have shown him already that he has, according to my estimation, maltreated me. But, as I believe I am answering what Mr. Murray, his counsel, is driving at, I will say that the reasons of my leaving were questions of dollars and cents, and I took into consideration my treatment there.

X Q. 60. At the time you were first shown the paper you have

referred to or had it read to you, who were present beside yourself and Mr. Mosler—Moses Mosler.

A. 60. I cannot remember; it was in the office, outside of the partition or railing; who was present I don't know.

X Q. 61. Did you go to the office of your own accord or were you sent for by Moses Mosler?

A. 61. I cannot remember.

X Q. 62. Was it previous to or subsequent to that time that you informed Mr. Mosler of your intention to leave and go to work for Mosler, Bahman & Co.?

A. 62. It was afterward, but at the same interview.

X Q. 63. At that interview did Mr. Mosler offer you any inducements to remain with the Mosler Safe & Lock Company?

A. 63. I think not; I think that was later.

X Q. 64. Please state the conversation, as nearly as you can, that took place between yourself and Mr. Mosler at the interview
177 during which he offered you the same wages you had been offered by Mosler, Bahman & Co., where the interview took place, and who beside yourself and Mr. Mosler was present.

A. 64. In the first place I cannot remember that Mr. Mosler made me the same offer made me by Mosler, Bahman & Co. He offered me a dollar more per week than the firm of Mosler, Bahman & Co., and I can't remember where it was; there was a great deal spoken that day about the matter; I don't know who was present.

X Q. 65. Did you state to Mr. Hemler that you would prefer to remain in the position you had if you received the same wages ($18 per week) that you had been offered by Mosler, Bahman & Co., and then after that were you not sent for by Mr. Mosler, and did you not go to the office; and in response to the question by Mr. Mosler as to whether or not wages was the only question as to whether you would remain or not did you not answer him in the affirmative; and were you not asked by Mr. Mosler why if that was the only question you had not come to him and asked for an advance if you thought you were not getting as much as you thought your services were worth; and did you not in reply say that you had a delicacy about such matters and that you thought your merits should be recognized without solicitation on your part; and then did not Mr. Mosler say that your wages would be raised to $18 per week, and also blame you for not speaking to him freely upon the subject before that time; and did you not then express your satisfaction and agree to remain at $18 per week; and did not this interview take place in the office; then, subsequent to that interview and on the same day, did not Moses Mosler meet you in the filling-room and say to you in substance, "Now, Mr. Goehler, in order to show you that I do appreciate your services, instead of the $18 which you were promised, and for which you agreed to remain, I have determined to give you $19 per week?"

Objection by counsel for plaintiff.
178 (Objected to for indefiniteness.)

A. 65. I stated yesterday that at that time I looked upon myself

as the seller of an article, and the most of the talks that occurred were for the most part calculated to gain time; for example, if all these questions would be answered with a "yes," it would amount to nothing in the matter we have on hand, for on the part of Mr. Mosler promises were made to me which he did not keep, and if I can't remember all these little matters I have sufficiently explained why in a former answer.

Objection by Mr. Murray, counsel for defendant.
(Answer objected to as not responsive to the question.)

X Q. 66. Mr. Goehler, you should remember for the present that you are merely a witness in this suit, and that it is your duty to fully and fairly answer all the questions put to you without regard to what your opinion may be as to the bearing of your answer on the case, and now I ask you to state whether or not your answer to the former question is an affirmative or negative one.

Objection by Mr. Moore, counsel for plaintiff.
(Objected to, as the function of a witness is to give testimony and not to construe and make an argument upon it.)
Statement of Mr. Murray:
Counsel for defendant states that the last question asks for an explanation of the former answer, and believes that instead of calling for an argument it calls for a categorical reply.

A. 66. The answer is neither affirmative nor a negative answer.
X Q. 67. Is question 65 capable of a categorical answer?
A. 67. No, sir; it cannot be answered neither by "yes" nor "no," as I remember some things and do not remember others therein stated.

X Q. 68. Then take up that question again and answer it
179 fully, so far as you know or remember, and state what parts of it you do not remember and what parts you do remember.

A. 68. I remember that Mr. Mosler and I spoke to each other about the reasons why I did not demand higher wages for some time past, and I believe that I answered that I did not think it proper for a foreman to ask for higher wages, and I am astonished to-day, after I see into it, that after the invention I made and which they made use of gave such heavy profits they did not raise my wages without any further argument or demand on my part. It is very easy to say, "ask higher wages," when you don't know whether you will get them or be set upon the street; besides, it is, according to my view of the world and things, no honor to a firm that they come to the conclusion that a foreman has over night become worth $3 more wages. I have other views on the subject, which I will not detail now. I stated in a former answer that I did not remember certain matters, some of which, by the discussion brought about by questions, I may afterward remember; for example, I remember that Mr. Mosler spoke to me in the filling-room and offered me $19. The rest of the matters mentioned in the question I do not now remember.

X Q. 69. Then, if I understand your last answer, you do recollect the first interview which took place in the office, and that the substance of the conversation detailed in question 65 as having taken place at that interview is correctly stated in said question 65, and that you do recollect the second interview in the filling-room, and that the conversation which took place at that interview was substantially as detailed in question 65?

A. 69. I said before that so many interviews took place that I cannot state what occurred at any particular interview; but this, I believe, I can affirm, that the $19.00 were offered me by Mr. Mosler in the interview in the filling-room, and this was the last interview he and I had together in the matter.

180 X Q. 70. Do you recollect whether or not you stated to Mr. Hemler, just before the interview at which you were offered the $18.00 per week, that if the Mosler Safe & Lock Company would pay you the same price you were offered by Mosler, Bahman & Co. you would not change your position?

A. 70. I said already what I remembered of question No. 65, and, besides, I cannot remember to have so stated to him, and if the counsel has his information from Mr. Hemler on this point, then I don't believe I said it; it is not necessary here to state why, but if it is demanded I will state it.

X Q. 71. All that is demanded of you here is to answer the questions as put to you, and you are requested hereafter to just answer the questions, and if you desire to write a brief or argument in this case that you do it at some time when the time of Mr. Mosler or his counsel will not be wasted. Was it after that interview in the filling-room that you signed the paper you have spoken about?

A. 71. Yes, sir; it was.

X Q. 72. State, as fully as you can, what took place at the interview when that paper was signed, and give the names of all who were present.

A. 72. I can't remember any more who was there; I hardly think any one else than Mr. Mosler and myself were present; it was just as we were going home.

X Q. 73. How many names were signed to that paper when you signed it, and how many names were signed to it when you last saw it?

A. 73. Mike Hemler signed it the first time it was shown to me; I just recollect that fact at this moment, of which I never even told Mr. Moore, my attorney; and when I signed I saw no other names, not even the name of Michael Hemler—that is, I am not positive that his name was there; if it was there it must be ahead of mine, as I signed it later.

181 X Q. 74. Did you go to the office without solicitation from any one that last time and request Mr. Mosler to let you have the paper, stating that you wanted to sign it?

A. 74. I went through the office as I always went through it, when I thought it was open; the superintendent and foreman always do so; and I then signed it. Mr. Mosler and I spoke together for awhile, but I cannot remember that I asked for it.

X Q. 75. Can you remember what took place? Was it at that time or the interview previous to that that Charles Glaeser and yourself went out into the stock-room that he might translate the paper to you out of the hearing of Mr. Mosler or those who were in the office?

A. 75. No, sir; it was not at that time that Glaeser went into the stock-room to translate it to me. I can't remember what took place between Mosler and myself.

X Q. 76. How many interviews did you have with Mr. Mosler about that paper?

A. 76. I can't say; we spoke three or four different times.

X Q. 77. Did you remember, when you were giving your answer to direct question 17, that there were more than two occasions when that paper was spoken about between yourself and Mr. Mosler?

A. 77. (Witness, after requesting that answer 17 be read to him, which is done, answers as follows:) At the moment I did not remember it; I was giving the narrative of what occurred without reference to the time it occurred—that is, I don't mean to say I did not remember it; it did not come up in the narrative I was giving.

X Q. 78. Can you state where those three or four interviews took place, and were they all between the time you say Michael Hemler signed the paper and the last time you say you signed it?

A. 78. Of course; only I can't say what we meant by time.

182 The Messrs. Mosler are excitable people; they begin a thing, go on with another, come back to the first subject, branch off on another, etc. The interviews were mostly in the office; I can't remember where else they were.

X Q. 79. You say, in answer to question 17, the young man Charles Glaeser went into the adjoining stock-room and tried to translate the paper to you, but did not succeed in translating it. How do you know he did not succeed in translating it?

A. 79. Because I could not understand what it meant, and because he was satisfied when I said, "You can't do it."

X Q. 80. Did he read it in English to you?

A. 80. Yes, sir; he did.

X Q. 81. Did you not say to him that you understood it and that it was not necessary to translate it, as you understood it the first time when Mr. Mosler read it to you?

A. 81. No; I did not.

X Q. 82. You say in this same answer 17 that you understood and still understand that the statements were "that you should testify that Moses Mosler always would endeavor, according to his best ability, to introduce the improvements in his factory." Is that the best recollection you have of what you then believed the contents of that paper to be?

A. 82. In that Mr. Murray wishes me to go further into detail, I, of course, will have to accommodate him. As much as I know, and as is generally known, the brothers Mosler are divided among themselves, and this paper wanted that I should testify that he, as president of the company, attended to his duties, or to compare it to a like paper that a workman gets from his employer as to his char-

acter, a letter of recommendation when the employé leaves his employer. It may have contained, according to my views, anything else, except to ask that I surrender rights that belonged to me; this I never understood it to contain.

X Q. 83. Then why did you refuse to sign it the first time?

183 A. 83. Because it was handed to me to sign right there and I had no time to consider it.

Adjourned until 9½ o'clock, December 18th, 1882.

X Q. 84. You say you refused to sign the paper when first handed to you because you had no time to consider it. When you did sign it finally had you considered it?

A. 84. I don't believe I said that. (Answer No. 83 is shown to the witness and he proceeds:) The time I signed it I thought I was going to stay, and I thought I would confer a favor on Mr. Mosler and signed the same; I don't know any more what I thought at that time; we had a great deal of conversation that day; I can't give or remember all the impressions that I had that day or all that took place; I would have to have kept a regular day book for that purpose.

X Q. 85. Then you had determined to stay with the Mosler Safe & Lock Company when you signed the paper, had you?

A. 85. Yes, sir; I have already stated that.

X Q. 86. You have also stated that all these interviews and conversations were only for the purpose of gaining time, as you considered that you had something to sell. Now, after having determined to remain at the price which seemed satisfactory to you, did you think you had sold that something, and signed that paper to complete the transfer?

A. 86. No, sir; my goods were still for sale.

X Q. 87. You have stated, in answer to question 17, that the contents of the paper, as you "then understood and now understand it," was that you should testify that Moses Mosler always would endeavor, according to his best ability, to introduce the improvements in his factory. Did you not know at that time that the improvements were already introduced, and that they were making more than one hundred safes a week containing these improvements?

Objection by Mr. Moore for plaintiff.

184 (Objected to as a torture of the witness' testimony.)

A. 87. Yes, sir; I knew at that time that they were making, with certain improvements, I am willing to admit, a hundred safes a week.

X Q. 88. I meant to ask about the improvement here in controversy.

A. 88. Yes, sir; I knew that they were making, you may say, that many a week with that improvement.

X Q. 89. Then why did you suppose he would want you to sign a paper agreeing to testify to that fact, or "that Mr. Mosler always would endeavor, according to his best ability, to introduce the im-

provements in his factory," which improvements he had already fully introduced into his factory?

Objection by Mr. Moore, counsel for plaintiff.

(Objected to as misrepresenting or torturing the meaning of the witness.)

A. 89. Because I believed at the moment that by signing the document I would indirectly admit giving away rights that I had; but, on considering, I did not consider I was giving away anything that belonged to me; I have been misunderstood in my original answer or it has not been properly translated; I did not mean that I should testify that Mr. Mosler always would introduce, but that he always had introduced, improvements in the factory.

(The last part of this answer was made by the witness after the notary had reinterpreted the question to the witness.)

X Q. 90. At the time you refused to sign the paper you had determined to leave the Mosler Safe & Lock Company and go to work for Mosler, Bahman & Co., had you not?

A. 90. Yes, sir.

X Q. 91. And at the time you did sign it you had determined to remain with the Mosler Safe & Lock Company, had you not?

A. 91. Yes, sir; I stated that before.

185 X Q. 92. At the time you were offered the $18.00 per week to remain, or at the time shortly thereafter, when you were informed that you would be paid $19.00 per week, was the signing of this paper one of the conditions or considerations for the advance you were to receive, or was anything said about signing that paper at either of these times?

A. 92. No, sir; I did not so consider it; I don't remember whether anything was said about the signing of the paper or not at these times.

X Q. 93. At the time Mr. Glaeser translated, or, as you say, attempted to translate, the paper to you, did you tell him that you fully understood the paper and its contents, and that you understood it the first time it was read to you by Mr. Mosler?

A. 93. If I had said that it would not have been necessary to have asked him to translate it—that is, I don't mean to say that I asked him to translate it.

X Q. 94. Well, then, you did not make any such statement to Mr. Glaeser; is that what you mean?

Question objected to by Mr. Moore for plaintiff.

A. 94. That is what I mean.

X Q. 95. The last time you came into the office and the time you did sign the paper did you ask for it of your own accord, stating that you desired to sign it?

A. 95. I have already stated that I did not remember the particulars. If I asked for it I cannot see any mistake in it, as I have already said what I thought it was, but I don't believe I asked for it.

X Q. 96. Is Mr. Charles Graeser a good German scholar?

A. 96. He always prefers to speak English, and speaks German as most Americans who speak German; they have not much opportunity to perfect themselves in writing German, and I do not consider them scholars in that regard.

X Q. 97. Is Mr. Graeser an American or a German?

186 A. 97. I do not know what to call such people. If he was born in Germany I would call him a German, and if he — born here I would call him a German-American.

X Q. 98. What do you call him? What is he, a German or a German-American?

A. 98. I call him "Young America."

X Q. 99. Upon what kind of paper and what was its size, as near as you recollect, upon which that statement was written that you signed?

A. 99. I can't give it any more; I think it was about seven or eight inches long and about five inches wide, and paper like this with no printing on it—blank paper; I don't know whether it had lines on it or not.

X Q. 100. How long have you been in this country, Mr. Goehler?

A. 100. I came here during the Franco-German war—between 1870 and 1871—with my family, but I was formerly at New Orleans on several occasions.

X Q. 101. During this examination you have conversed with your attorney in the English language, have you not?

A. 101. Yes, sir.

X Q. 102. Do you think if I were to read to you the paper you signed at that time, and about which you have been testifying, in the English language that you would understand it sufficiently to recognize whether or not it was the same paper that was read to you by Mr. Mosler and Mr. Glaeser?

A. 102. I said already what I thought were the contents of that paper, and as I have not had possession of the paper since I do not think that by reading it in English I would get a different understanding of it, and I don't know whether I am able to decide whether it contains the same expressions as it contained. If I am allowed to look at my signature I will acknowledge my signature and acknowledge that it is the same paper.

187 X Q. 103. You have thought a good deal about the paper since you left the Mosler Safe & Lock Company, have you not?

A. 103. No, sir; I only told my attorney of it when he asked me to tell him everything that occurred at that time.

X Q. 104. Had you spoken to Mosler, Bahman & Co. about it before you spoke to your attorney?

A. 104. Not that I know of.

X Q. 105. When did you first speak to your attorney about it?

A. 105. When I employed him.

X Q. 106. When was that? Which attorney, the one here present or the one who made the application for a patent for you?

A. 106. It was prior to the time I applied for a patent; the attorney was Mr. Moore.

X Q. 107. I will now read to you in English a paper, which the notary will take down as I read, and I will ask you to answer, without the intervention of an interpreter, whether you recognize the statements I read as being the same in substance as the paper you signed. Have you any objections to giving your answer in English?

A. 107. Of course I object or have objections to so doing, because I have had an interpeter so far, and I want to keep him until I get through.

Statements of counsel:

Counsel for Mosler requests the officer to sign his name on the back of the paper now handed to him, so that it may be identified hereafter.

Counsel for Goehler objects to any such performance or to any such pantomime, and denies the authority of the notary to do as requested unless the paper be offered in evidence or in some way be made pertinent to the case.

Counsel for Mosler, in answer to the objection, states that he
188 will put a question to the witness and read the paper, and that it be taken down as read by the notary or offer a compared copy of it in evidence, as opposing counsel may desire.

X Q. 108. I will now read a paper to you; whereupon counsel for defendant Mosler, reads as follows:

"CINCINNATI, OHIO, *Feb'y* 11, '82.

"Moses Mosler, Esq.

"D'R SIR: As it has been reported that we have laid some claim to the invention in round-cornered safes made with a bent angle bar, such as you have filed your application for letters patent upon, we desire to say to you that such statements are without foundation, and now say to you that we fully recognize that you are the inventor of such improvements, and that all we did was to construct the safe under your supervision and in accordance with your directions.

"MICHAEL HEMLER.
"G. J. H. GOEHLER.

"Witness:
C. J. GRAESER."

Do you recognize those statements? And I now exhibit to you the paper and ask you, Do you recognize your signature to it? The paper read is marked by the notary on the back thereof as follows: "For identification—Edward C. Reemelin, notary public."

A. 108. I said before that I would not understand the paper read in English any better than I did originally. The signature is the signature I usually use.

X Q. 109. Is that the same paper that you signed at your last interview with Mr. Mosler before you left the Mosler Safe & Lock Company?

A. 109. In order to say it is the same paper, I would have had to have had it in my possession continually since that time.

X Q. 110. Do you believe it is the same paper?

A. 110. It can be it, it might not be.

189 X Q. 111. Do you think it is it?

A. 111. The time has been too long for me to answer yes or no.

X Q. 112. I want to know your opinion. What is your best opinion about it?

A. 112. If I say I believe it is it, it is still not said that it is it; the belief in a thing has always the possibility that it may or may not be.

X Q. 113. I simply want your best information and belief as to whether the paper I exhibited to you is or is not the identical paper you signed and about which you have testified to having signed, both in your direct and and cross-examination?

A. 113. I believe that it is similar to it.

X Q. 114. That don't answer the question. Is it the same paper—do you believe it is the same paper?

Objection by Mr. Moore.

(Question objected to as the merest repetition, as the witness has already said that he recognized his signature and believed it was the same.)

A. 114. I believe I have answered all I can in the matter. It is now 12.20, and I have made an appointment for half past twelve, and will be blamed if I don't keep my appointment. We have always heretofore adjourned at 12 m., and I would request that we adjourn until 2 p. m.

Adjourned until 2 p. m.

X Q. 115. You say in answer to question 6 that about the middle of December, 1881, Mr. Mosler asked you to get ready and go with him to the Patent Office in order to properly take out the patent for the round corner—this invention—the one here in controversy, I assume. Will you please state *that* the conversation that took place between yourself and Mosler at that time, and if you cannot give the exact conversation give the substance of it, as near as you can.

A. 115. What I can remember of that conversation I have

190 about stated. I was willing to go along and would have transferred my right to him had I been sufficiently compensated for the same.

X Q. 116. You did, you say, go to him and ask him if he was ready to go with you. Did you at that time or before, when he asked you to go, demand any compensation before you would go or before you would sign any papers?

Objection by Mr. Moore for plaintiff Goehler.

(Objected to as irrelevant and immaterial.)

A. 116. No, sir; nothing was said. I made up my mind that I

would speak to him as we went to get the application, if I could find the opportunity.

X Q. 117. When he told you in the afternoon that he had had a consultation with his lawyer or a patent agent, and this gentleman whom he had consulted had said that it was not necessary that you should be present at what was done, did he, Mr. Mosler, state any reasons why it was not necessary that you should be present?

A. 117. The only reason he gave was that the gentleman had said he did not need me.

X Q. 118. Did you understand at that time that Mr. Mosler had made application for a patent, or that he had ordered his attorney or patent agent to make an application for a patent, for the invention here in controversy?

A. 118. No, sir; I did not know that he had made an application even at the time I made my application. Mr. Moore asked me if I knew that Mosler had made an application and I said no, I did not.

X Q. 119. Did you at any time before or since you left the Mosler Safe & Lock Company assert to Mr. Mosler or any one connected with the Mosler Safe & Lock Company that you had any rights to a patent for this invention or notify the Mosler Safe & Lock Company or Mr. Mosler himself that you would exact any pay for the use of the invention?

A. 119. Not that I know of.

X Q. 120. Did you ask or request Mr. Mosler or suggest to him to assist you to take out a patent on this invention?

191 A. 120. No, sir.

X Q. 121. You say in answer to question 40 that Mr. Hemler never requested or directed you or attempted to show you how to cut out an angle bar so that it would bend to form round corner or you never would have had to make any attempts yourself. Do you mean by this that you would not do as directed, or that if he had told you to cut out one web of the angle so that the other would bend round it so as to form a round corner you would not have had to make experiments in order to accomplish that end successfully?

A. 121. I always did what Mr. Hemler or any one else ordered me to do. If he had told me what to do, of course, if that had accomplished the result, I would not have had to make those different steps which finally landed me at the point of success.

X Q. 122. Did he tell you to do anything or make any experiments in that direction?

A. 122. No, sir; if he had given any orders by which any improvement was to be made he would have assisted at the same himself. This I can show by all the workmen in the factory.

X Q. 123. Was Mr. Hemler in the factory when you commenced to make the experiments, and did he know anything about your making them before you showed the paper model to Mr. Mosler?

A. 123. Whether he was in the factory or not I don't know, and likewise I don't know that he knew of any experiments I made; at any rate, I didn't know of it, if he did.

X Q. 124. In what part of the office was it where you showed that paper model—that Goehler Exhibit No. 2—to Mr. Mosler?

A. 124. I believe Mr. Mosler was behind the counter at the opening, or he may have been in front of the opening; I cannot now say positively.

X Q. 125. How long did that interview last?

192 A. 125. As near as I can remember, it ended very quickly.

X Q. 126. Did any person besides yourself and Mr. Mosler take part in the conversation?

A. 126. Not that I can remember.

X Q. 127. How do you recollect so clearly the day, the hour or hours of the day, and all the conversations that took place between yourself and the witnesses that have testified on your behalf and yet so imperfectly recollect all the other conversations that I have inquired about which took place subsequent to the time that first angle bar was bent?

A. 127. Because I have indisputable evidence as to these facts, and as to the others because they are partly new and partly because I had thought over what I thought was my evidence and had not devoted that careful thought to questions brought up during the examination.

Re-examination:

Q. 128. At the time that you refused to sign the paper in question—that is, as I understand it, when it was first presented to you—had you any idea whatever or belief as to what it meant or contained?

A. 128. No; I only feared what it might contain.

Q. 129. At the time that you actually signed it had it been interpreted, and did you think you understood it?

A. 129. I have already stated that an attempt was made to interpret it to me, but which was not a success.

Q. 130. Did you when you signed it think you understood it?

A. 130. No, sir.

Q. 131. Then why did you sign it?

Question objected to by Mr. Murray for defendant Mosler.

A. 131. In order to oblige Mr. Mosler.

193 Q. 132. You have heard it read to you this morning in English. Did you then understand it so as to now know what it means?

A. 132. I heard it read this morning, and I am of the same opinion as to its meaning as before.

Q. 133. You stated in answer 128 that you refused to sign it at first because you feared what its meaning might be, and you stated in answer 131 that you finally signed it to oblige Mr. Mosler; what I want to know is what it was that removed this fear between the time you refused to sign it and the time you signed it; and what did you then understand it to mean?

Objection by Mr. Murray.

(Question objected to, — the witness has not stated that anything

occurred to remove his fears, and as leading, being a mere invitation to the witness to explain away the effect of his former testimony.)

A. 133. My fears were removed because I bethought myself that for an assignment other forms would be necessary; I have answered twice what I thought it meant.

Q. 134. In answer 17 you say the contents of the paper, as I understood them, were "that I should testify that Moses Mosler always would endeavor, according to his best ability, to introduce the improvements in his factory;" what I want to know is, first, What does the word "testify" in this connection mean? Does it mean swearing as a witness in a legal proceeding, or does it mean bearing witness generally? And, second, I want to know what you referred to in the use of the word "improvements."

Objection by Mr. Murray, counsel for Mosler.

(Question objected to as leading and suggestive and as an invitation to *the* explain away the effect of his testimony, and as a further reason that it is not proper at this stage of the examination, the explanation asked being for an explanation asked of an answer given on direct examination.)

194 A. 134. I meant by "testify" what we mean in English by confirm or affirm, or to state generally, and by "improvements" I meant something better, something new, nothing special, but used the term generally; not in the singular, but in the plural.

Q. 135. I observe that you commonly say "we" and rarely, if at all, "I;" what I want to know is, Is there any rule of manners or good breeding or is it a requisite of good breeding among Germans that the one or the other term should be used; what is the fact in relation to these?

Objection by Mr. Murray, counsel for Mosler.

(Objection for the reason above stated, and for the further reason that it does not so far appear that the witness is qualified to testify as expert in the matter inquired about.)

A. 135. No one of any breeding among Germans who is in authority over men would use the pronoun "I," but would say "we," even when making a command or giving an order.

Q. 136. Is it or not the fact that the reason for your seeming instability or vacillation of purpose, as shown in your promise to continue to work for the Mosler Safe & Lock Company, and very soon thereafter going into the employ of Mosler, Bahman & Co., that your wife had persuaded you, in view of the indignities that you told her had been put upon you at the Mosler safe & lock factory by Michael Hemler, to take advantage of the then opportunity and go to work for Mosler, Bahman & Co.?

(Objected to — same reasons as 134 by counsel for Mosler.)

A. 136. Certainly, and I would not as an intelligent German bring my wife into this case if I had not sworn on oath to tell the truth.

Q. 137. Did Mr. Moses Mosler, after he had been informed by you that you had an offer of work by Mosler, Bahman & Co., offer to give you a paper to show to Mosler, Bahman & Co., which paper was to state that the Mosler Safe & Lock Company were then
195 paying you or had offered to pay you a certain other larger sum; if so, what was that sum per week?

A. 137. Such a paper was offered me, and the sum was $22 or $25; I cannot positively state which; but when I asked for the paper they refused it.

G. J. H. GOEHLER.

Adjourned until 10 o'clock, Tuesday, December 19th, 1882.

STATE OF OHIO, }
Hamilton County, } *ss:*

I, Edward C. Reemelin, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that the foregoing depositions of Henry Kech, August Schultze, Charles Buffler, Louis Gerwe, Herman Schmidt, Leopold Moritz, George Thorwarth, John Hardtle, and George J. H. Goehler were taken on behalf of George J. H. Goehler, in pursuance of the notice hereto annexed, before me at the office of James Moore, No. 53 Pike's building, Cincinnati, in the county of Hamilton, State of Ohio, on the 11th, 12th, 13th, 14th, 15th, 16th, and 18th days of December, 1882; that each of said witnesses was by me first duly sworn before the commencement of his testimony; that the testimony of each of said witnesses was written out by myself; that the opposing party, Mr. Moses Mosler, was present, with counsel, during the taking of said testimony; that said testimony was taken at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, and was commenced at 9 o'clock a. m. on the 11th day of December, 1882, was continued, pursuant to adjournment, on the 12th, 13th, 14th, 15th, 16th, and 18th, and was concluded on the 19th of said month; that I am not connected by blood or marriage with either of said parties nor interested, directly or indirectly, in the matter in controversy.

196 In testimony whereof I have hereunto set my hand and affixed my seal of office, at Cincinnati, in said county, this 19th day of December, 1882.

[NOTARIAL SEAL.] EDWARD C. REEMELIN,
Notary Public within and for Hamilton County, State of Ohio.

197 GOEHLER *vs.* MOSLER.

In the Matter of the Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Improvement in safes, now pending before the Commissioner of Patents.

George J. Murray, Esq., attorney for Moses Mosler:

You are hereby notified that on Wednesday, the 7th day of February, 1883, at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, at 9.30 o'clock a. m., I shall proceed to take the

testimony of George Thorwarth, Anton Stoeckle, Frederick Bahmann, and Henry Moorman, all of Cincinnati, Ohio, and of Leopold Moritz, of Newport, Kentucky, and of Louis Gerwe, of Covington, Kentucky, as witnesses in my behalf. The examination will continue from day to day until completed.

Cincinnati, Feb. 5th, 1883.

GEORGE J. H. GOEHLER,
By his attorney, JAMES MOORE.

Received copy hereof.

GEORGE J. MURRAY,
Attorney for Mosler.

198 GEORGE J. H. GOEHLER *vs.* MOSES MOSLER.

Before the Commissioner of Patents.

In the Matter of the Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Patent for Improvements in Safes.

Depositions of witnesses examined on behalf of George J. H. Goehler, pursuant to the annexed notice, at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, on Wednesday, February 7th, 1883.

Present: On behalf of George J. H. Goehler, James Moore, and on behalf of Moses Mosler, George J. Murray.

ANTON STOEKLE, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. Do you speak English sufficiently well to answer the questions that may be put to you?

A. 1. No, sir; I cannot.

199 Whereupon Krato F. Topp is introduced for the purpose of interpreting the witness' testimony and is first duly sworn to faithfully, honestly, and impartially interpret the questions and answers that he may be called upon to interpret in this case.

Question to interpreter. Are you a relative of either of the parties to this suit or are you interested in any way in the subject of the controversy?

A. No, sir; I am not.

Q. 2. State your name, age, residence, occupation, in whose employ you are now, and how long you have been thus employed.

A. 2. Anton Stoekle; 46 years old; I live at No. 99 McMicken avenue, Cincinnati, Ohio; I am a blacksmith by occupation; I work for Mosler Safe & Lock Company; this coming March it will be five years that I have been in their employ.

Q. 3. State whether you knew of the invention of cutting and bending angle irons for frames for round-cornered fire-proof safes such as are now made by Mosler Safe & Lock Company? If you

did, state when you first had knowledge of the cutting and bending of such angle irons and state who made that invention, if you know.

Objection by Geo. J. Murray.

(George J. Murray objects to the last part of this question as not proper in rebuttal.)

A. 3. I know nothing of this invention, because I have nothing to do with that class of work. I only make frames. I make round-cornered frames like these corners. I make whole frames.

Q. 4. State whether you ever had knowledge of the cutting or bending of an angle iron or angle irons similar to Goehler Exhibit Model No. 5; if so, when did you see the first angle iron cut and bent or either; state who were present, and what was then said about it by those present.

200 Objection by George J. Murray.

(George J. Murray objects to this question as not proper in rebuttal.)

A. 4. About the cutting I know nothing. That is not my business; I do the bending of this iron. The first time I commenced to work on this angle iron was March 1st, 1882. I do not know when the first of this class of iron was cut and bent, because at the time it was patented I did not have any work to do about it.

Q. 5. Do you recollect the first time you saw such an angle iron? If so, state when it was, as nearly as possible, and what took place at that time.

A. 5. I can't recollect that now. I have a great deal of work to do. I can't remember it, as a good deal occurs and I can't fix time. I seen such an iron bent round like this four or five years ago, but not cut in this way. The first time that I seen one cut was under Burkmeyer, but it was not cut like this. I simply took a cold-chisel and cut out a three-cornered piece and bent it round. I heated it and drove it together closely. There was a crack in there yet. You cannot cut it out with a cold-chisel — that you cannot see the crack.

Q. 6. Well, were there safes made with that, or were they express boxes?

A. 6. That I don't know. I can't tell whether they were for safes or express boxes. They made three or four. They put them in the rear or back. They made some boxes; whether safes or not I do not know. They push them inside; you can't notice it.

Q. 7. I don't want to know about the angle bars that were cut out for the rear corners of express boxes or the rear of safes, made like Goehler Exhibits Model Mosler Round-Cornered Safes Nos. 1 and 2, but what I do want to know is when you first saw an angle bar like Goehler Exhibit Model No. 5, either after or before it was bent or cut, and state the circumstances and time.

201 A. 7. In the March of 1882 was the first time I commenced to work on such angle irons, but I recollect that I saw different men at the shop where I was working handling and working on this kind of angle iron, such as Goehler Exhibit Model No. 5, the preceding winter.

Q. 8. Who were those different men? And state exactly what they were doing.

A. 8. I don't know the names of the men that were working on it at that time. They are working in other shops. I saw them working on the iron, but I can't tell exactly what they were doing.

Q. 9. Do you know George Thorwarth, the machinist who worked there, and George J. H. Goehler, the foreman, and were they the men you saw working at it?

Objection by George J. Murray.

(George J. Murray objects because the question is leading, and for the further reason that the witness has stated he don't know the names of the men who were working at it.)

A. 9. I only know George Goehler. He was foreman at that time. The other one I don't know. I know that Goehler worked at it. I don't know of the others. I also know that Hemler worked on it.

Q. 10. Did you see Hemler and Goehler work at it the same time or at different times?

A. 10. They were together and stood around it in the blacksmith shop and talked about it.

Q. 11. Did you see such bar while being bent; if so, who worked at the bending of it?

A. 11. I don't know exactly who bent the iron. I saw Goehler and Hemler standing around it. I can only say that the first iron that was bent after it was punched out was in another department. I can't tell who punched it out, because I could not see the punching machine. It was bent in the blacksmith shop, and Goehler and Hemler stood around it while it was being bent.

202 Q. 12. Who else stood around it while it was being bent?

A. 12. There were five blacksmiths in the shop at the time, but they were at different posts of duty and were not standing around the iron while it was being bent.

Q. 13. Did you see John Hardtle there while it was being bent?

A. 13. Hardtle had a position with us at that time, but I can't tell whether he was there at the time it was being bent; he had nothing to do with it, and I can't tell whether he was there or not.

Q. 14. State, as nearly as you can, the year and month and date of the month when this occurred.

A. 14. It was—let me see; I worked first on these in March; in February I worked at week's wages, and it may be about Christmas, 1881, that I saw it; that is about as near as I can come to it. The blacksmith shop was full of men, but each one was at his post; they may have looked over occasionally.

Q. 15. Before the time you saw that angle bar bent were there any other angle bars cut like Hemler Exhibit Model Unbent Angle Bar No. 2 or cut and bent like Hemler Exhibit Round Corner No. 2 or Goehler Exhibit Model No. 5, or any safes made on such angle bars?

A. 15. None were made like these before that time—that is, I didn't see them made.

Q. 16. Are you sure that Hemler was present or helped in the cutting of that first angle bar?

A. 16. I know nothing of the cutting.

Q. 17. Are you sure that Hemler was present or took part in the bending of that first angle bar?

A. 17. I don't know whether he helped at the bending, but I know that he stood there.

Q. 18. Are you sure it was bent in the blacksmith shop, or did you only see it lying there after it was bent?

203 A. 18. I saw it being bent, but did not see it being punched.

Q. 19. Are you quite sure that it was at the time it was being bent that you saw Hemler there, or may it not have been after it was bent that you saw Hemler looking at it?

Objected to by George J. Murray.

(George J. Murray objects to the question as being previously fully answered and as an attempt to contradict the witness' previous testimony.)

A. 19. I can't exactly say whether it was at the first or last piece that he was present, but I saw him there several times when such angle irons were made.

Q. 20. Do you recollect whether prior to the bending of that first angle iron Goehler showed you a piece of paper with a pencil sketch on it or cut out so as to show how the angle bar would bend?

A. 20. I know nothing of any paper that Goehler showed me.

ANTON STOEKLE.

The further taking of this deposition is adjourned until 1½ p. m., this 7th day of February, 1883.

The parties met pursuant to adjournment.

Present: Mr. James H. Moore, for Goehler, and George J. Murray, for Mosler.

By consent of parties the notary acts as interpreter for the witnesses.

LEOPOLD MORITZ, being recalled and first duly sworn, answers in answer to interrogatories as follows:

Q. 1. You will please examine Hemler Exhibit Model Round Corner No. 2 and Helmer Exhibit Angle Bar No. 2 and state if you understand what they represent, and, further, whether any

204 safes were made at the Mosler Safe and Lock Company's factory upon angle bars such as shown in the exhibits prior to the time that Goehler showed you the piece of paper cut like Goehler Exhibit No. 6, heretofore testified to by you?

A. 1. This is a bar out of which to bend an angle (referring to Hemler Exhibit Model Unbent Angle Bar No. 2), and this (referring to Hemler Exhibit Round-Cornered Safe No. 2) is the angle bar made from the straight angle bar referred to a moment ago. That I don't know; I can't say.

Q. 2. Question is repeated and the witness is herewith shown a copy of Goehler Exhibit No. 6, the original being at the Patent Office.

Counsel for Mosler desires the interpreter to state of record whether or not the last part of the last answer of witness, to wit, "That I don't know; I can't say," was not in response to the last part of the question, which was put to the witness after the previous portion of the answer was given, which part of the question is in the following words: "and further whether any safes were made at the Mosler Safe and Lock Company's factory upon angle bars such as shown in the exhibits prior to the time that Goehler showed you the piece of pape cut like Goehler No. 6, heretofore testified to by you?"

Counsel for Goehler here desires to protest against this effort to muddy the record by substituting in place of the language of the witness (which it is abundantly evident was only intended to mean that he, the witness, did not understand the latter portion of the question) the opinion of the interpreter.

Counsel for Mosler states (and asks the interpreter and officer to state whether he is correct or not) that the former question, which is in two parts, was not put to the witness separately—that is, the first division of the question put to him by the interpreter and his answer taken to that part, and then the last part of the question put to him, and in reply to that his last part of the answer was
205 given in the words above quoted, and the only purpose of the interruption by counsel for Mosler was to have what actually transpired appear upon the record, and now asks the interpreter if the statement of Mosler's counsel is not correct.

Inasmuch as the notary is the officer taking these depositions, the interpreter requests of him instructions whether he shall answer the question of counsel for Mosler.

The officer instructs the interpreter that it is necessary for him at all times to give the full answer of the witness to any question put to him, and if he has not done so in the present instance he ought to do so now, and if he has any doubt as to the correctness of the answer once interpreted by him he can re-interpret the question to the witness and see that we do get a correct answer.

The interpreter says in answer to Mr. Murray's statement that he interpreted the question to the witness to the best of his ability, and that the answer as given by the witness was given to the officer in the manner in which he has written it down, but it may be that the witness did not comprehend the drift of the question.

Counsel for Mosler asks, as before, if it is not a fact that the interpreter interpreted the first part of the question to the witness and took his answer to the first part of the question and gave it to the officer, and after that first part of the answer was written down then interpreted the second part of the question, and in reply to that the last part of the answer was then given.

Counsel for Goehler says that he thinks a fair opportunity has been given for dissertation upon the record, and, as counsel for Mosler has just observed, that this matter is at my expense, meaning at the expense of my clients, and as there is no way of limiting this

waste of time and my client's money other than by simply insisting that the deposition go on in its usual course, with permission to counsel for Mosler, if he be not satisfied with a full cross-ex-
206 amination of the witness, to write such statement as seems to him good and have it attached to the deposition; and, in order to obviate the confusion incident to the foregoing, I withdraw the question as repeated.

Under instructions of counsel for Goehler, Mr. Murray asking to make another statement, his statement is refused.

Counsel for Mosler asks the officer whether he refuses under the instructions of counsel for Goehler to accept any statements or comply with any requests made by Mosler's counsel.

The officer states officially that he has not done so and does not now, but thinks that enough has been said on both sides, and that the testimony is the main point at issue, and if counsel for Mosler or Goehler is not satisfied with an answer they ought either to repeat the question or wait until cross-examination to get it straight, and not try to get it through an interpreter, but through the witness.

Counsel for Mosler objects to the ruling of the officer and asks the officer to state on record whether or not the question about which this discussion has arisen was not put to the witness in divisions—that is, the first part put first and the answer taken to it before the second part was put.

The officer states that this is undoubtedly so.

Q. 3. Your attention is directed to question six and answer of your prior deposition in this cause, and a paper cut is exhibited to you which is intended to be copy of Goehler Exhibit No. 6, and you are asked if that is a correct copy of said exhibit according to your recollection.

A. 3. I think this is the same paper; it has the same form as the paper out of which I cut it.

Q. 4. Were any round-cornered safes made at the factory of the Mosler Safe and Lock Company having angle irons like Hemler Exhibits Round Corner No. 2 and Unbent Angle Bar No. 2, before the time that Goehler showed you this cut?

207 A. 4. No, sir; I did not see any.

Q. 5. Does the line "*c*" shown on the copy correctly represent that part of the cut that Goehler showed you?

A. 5. Yes, sir; it does. The lines "*b*" "*b*" ought to run up to line "*c*."

Q. 6. You are asked to take another piece of paper and cut it so as to accurately represent what you mean by lines "*b*" "*b*" running up to the line "*c*."

Objection.

(George J. Murray, for Mosler, objects to the question as not in rebuttal of any testimony taken by Mosler, but an attempt to explain away the witness' testimony given in chief.)

A. 6. I herewith have cut and now present the cut that I have

made and ask the notary to mark it Goehler Exhibit No. 11, which is accordingly done.

Q. 7. Then why was the Exhibit Goehler No. 6 cut rounding and this cut straight?

Objection by Geo. J. Murray.

(George J. Murray, for Mosler, objects to this question for the same reason as he objected to question No. 6.)

A. 7. When I made the cut marked Goehler Exhibit No. 6 the scissors which I used slipped too low in the paper while cutting the exhibit, and that is my explanation why the Goehler cut No. 6 shows the top to be round instead of straight.

Q. 8. Your attention is called to question and answer 5 of your former deposition, which will be read and interpreted to you, and you are asked in what you intended Goehler Exhibit No. 6 to differ from Goehler Exhibit No. 1?

(George J. Murray, counsel for Mosler, objects to this question for the same reason that he objected to the preceding question.)

A. 8. The round line on No. 6 is not right; the straight
208 line on No. 11 is right. The question being interpreted to the witness, the witness says the No. 1 I saw here was too narrow; the line "*a*" was not cut out sufficiently wide, so that if it was bent together it would not make an angle.

LEOPOLD MORITZ.

GEORGE THORWARTH, being recalled and first duly sworn, deposes and says in answer to interrogatories:

Q. 1. Were any safes made at the Mosler Safe and Lock Company's factory prior to November, 1881, having in them any angle bars like or substantially like Hemler Exhibit Model Round Corner No. 2 and Unbent Angle Bar No. 2?

A. 1. As far as I saw, there were none.

Q. 2. Was it possible for such angle bars to have been cut or bent in that shop, from the time you commenced to work as tool-maker, without you're knowing of such manufacture?

A. 2. I do not believe that any could have been made without my having seen it.

Q. 3. Well, were any made prior to those you testified in a former deposition to having assisted Goehler to make?

Objection.

(George Murray, for Mosler, objects, as it does not appear that the witness was in a position to know every safe made by the Mosler Safe and Lock Company while he was there.)

A. 3. No, sir; as far as I know, there were none.

Q. 4. According to the custom of that and similar shops, if such a bar was to be cut and bent, what character of workman, blacksmith, tool-maker, or what, would be called upon ordinarily to cut out and bend such bar?

A. 4. The bar would be generally cut as to length by a day laborer and the bar would be bent by a blacksmith, and the man who is at the punch-machine—the man who cuts the length—would cut out the angle.

209 Q. 5. Suppose such a bar was desired to be cut out and bent in a shop where they hadn't made that kind of bars before and where they have no punches for it, what kind of workmen would be called upon to cut out the angle so as to permit the bar to be bent?

A. 5. I can't answer the question very well. Such a job might be given to a tool-maker or locksmith; it wouldn't do to give it to a laborer; he would have to be a locksmith.

Q. 6. If there was no mechanic in the shop accustomed to cutting out such bars and no such bars had been cut out in the shop, is it or not a fact that the first such bar or bars to be cut would ordinarily be brought to the tool-maker?

A. 6. In case that there should not be any locksmith at all in the shop then it would certainly be given to the tool-maker to cut out, but there are generally several locksmiths in each shop; if it were otherwise they could not make any safes.

Q. 7. In answer to question 41 of your former deposition you stated substantially that Mosler, Bahman & Co. did not have any punches of a particular kind when you went there, and in answer to question 45 of the same deposition you say that they had a punch and die when you went there. Please explain this and state what, if any, kind of punch, Mosler Bahman & Co. had when you went there.

Objection by Geo. J. Murray.
(Question is objected to as improper in rebuttal.)

A. 7. The punch at Mosler, Bahman & Co. was different than the one at the Mosler Safe and Lock Company. I was asked whether they had such a punch and I said "No," as the punch Mosler, Bahman & Co. had was different.

GEORGE THORWARTH.

The further taking of this deposition is adjourned until Thursday, the 8th day of February, 1883, 9.30 a. m.

210 Pursuant to adjournment, the further taking of testimony continued on Thursday, the 8th day of February, 1883, at 9.30 a. m.

Present: George J. Murray, for Mosler, and James H. Moore, for Goehler.

LOUIS GERWE, being recalled and first duly sworn, deposes and says in answer to interrogatories as follows:

Q. 1. Were any round-cornered safes made at the Mosler Safe and Lock Company's factory prior to November, 1881, having in them angle frames like or substantially like Hemler Exhibit Model Unbent Angle Bar No. 2 or Hemler Exhibit Round Corner No. 2?

A. 1. No, sir; there have not been—not before November, 1881.

Q. 2. In your answer 8 of your prior deposition, which will be read to you, it is stated that you made a round-cornered safe about the last of October, 1881. You will please examine model now shown you, to be marked Goehler Exhibit Model Mosler Round-Corner Safe No. 3, and state how, if at all, said model compares with the safe you made in October, 1881?

Objection.

(George J. Murray, for Mosler, objects to the question as incompetent, merely calling for an explanation of the witness' testimony-in-chief and not in rebuttal of any testimony offered by Mosler.)

A. 2. Well, the bottom didn't come together, it only bent about two inches around the corner, and then there was another piece laid or screwed in the bottom; the difference in the front was this one angle iron was cut out so as to allow the hinge of the frame to lay down in it; that is all the difference that I see in it.

Q. 3. Then, if you are correctly understood, the angle irons
211 in the front of the model are a correct representation of the safe that you seen made in the latter part of October, 1881, except that the angle iron on the right side was cut out to leave room for the hinge; is that right?

Objection.

(George J. Murray, for Mosler, objects to the question for the same reason as given by him to question 2.)

A. 3. Yes, sir.

Q. 4. Was there ever a round-cornered safe made prior to November 1st, 1881, in that factory that had a moulding on the front?

Objection.

(George J. Murray, for Mosler, objects to the question for the same reason as given by him to question 2.)

A. 4. Yes, sir.

Q. 5. When was it made, and was it the one that you saw about the latter end of October, 1881?

Objection.

(George J. Murray, for Mosler, objects to the question for the same reason as given by him to question 2.)

A. 5. It was in the spring time, about March or so, 1881; it was not the one that I seen in October, 1881.

LOUIS GERWE.

The further taking of this deposition is adjourned until 2 p. m. this 8th day of February, 1881.

The parties met pursuant to adjournment.

Present: James H. Moore, for Goehler, and Geo. J. Murray, for Mosler.

FRIEDRICH BAHMANN, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and whether you are a stockholder in the corporation of Mosler, Bahmann & Co.

212 A. 1. My name is Friedrich Bahmann; am 60½ years old, and I reside at No. 264 Findlay street, Cincinnati, and I am a stockholder in the corporation of Mosler, Bahmann & Co.

Q. 2. State when you were president of that corporation?

A. 2. That was in 1879 or 1880; I can't state exactly the year now.

Q. 3. You are the senior Bahmann connected with that concern, are you not?

A. 3. Yes, sir.

Q. 4. Did you during the early part of 1882 or the latter part of 1881 offer a position to Michael Hemler, who is now with the Mosler Safe & Lock Company, to work in any capacity for Mosler, Bahman & Co.?

A. 4. Never; nor any one of us.

Q. 5. You know Michael Hemler, do you not?

A. 5. I know him for a good many years already.

Q. 6. Did you at any time above stated or at any other time have any conversation with Hemler upon the subject of his working for Mosler, Bahmann & Co.?

A. 6. I didn't speak a word with Mr. Hemler since the time he is connected with the Mosler Safe & Lock Co.

FREDERICK BAHMANN.

HENRY MOORMAN, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, what is your occupation, and how long have you been employed there?

A. 1. Henry Moorman; age, 19½; residence, 107 Twelfth street; I am a safe-maker at Mosler Safe & Lock Co., and have been employed there since September, 1879.

213 Q. 2. You will please examine Hemler Exhibit Model Unbent Angle Bar No. 2 and Hemler Exhibit Model Round Corner No. 2, and state whether there was to your knowledge *and* any round-cornered safes made at Mosler Safe & Lock Company's factory having in them angle bars like or substantially like the exhibits prior to the first of November, 1881.

A. 2. No, sir. There were round-cornered safes made, but no angle such as this.

Q. 3. When was the first round-cornered safe, if you know, having an angle bar in it like Goehler Exhibit No. 5 or Hemler Round Corner No. 2 made at that factory? State the date as nearly as you can and who made it.

A. 3. I was the first one that made a round-cornered safe with an angle bar in it; I couldn't really tell whether it was punched out or not; I made it in the year 1881, in November, during the week between the 7th and 14th.

Q. 4. Do you know whether there was in the factory at the time you made that safe any punches adapted to cut out the metal from the angle of such bars; and do you know whether such punches were subsequently made; and do you know who made them and when they were made?

A. 4. There was no punches made then; yet, as I made the safe, punches were subsequently made; I know who made them; they were made after I made the iron safe with round corners.

Q. 5. Who made those punches?

A. 5. Mr. Thorworth.

Q. 6. Who instructed you to make that safe and how to make it, if anybody?

A. 6. Mr. Goehler.

Q. 7. Do you think it is possible that a round-cornered safe having any such angle bar as the exhibits could have been made at that factory while you were there and prior to the time you made your round-cornered safe that you have referred to without your knowing of it?

214 A. 7. No, sir.

Q. 8. Explain to me why it is that you must have seen such safe if it had been made there.

A. 8. There is no safe gets made unless it is made in the box-maker department at that time unless we would see it.

Q. 9. Do you mean that every box-maker would necessarily see every safe made, or do you mean that your employment as a piece worker or otherwise enabled you to see every safe made?

A. 9. Every box-maker would necessarily see every safe made. Any box-maker would have to see it.

Q. 10. Did you work day work or piece work?

A. 10. At what time.

Q. 11. During September, October, and November, 1881?

A. 11. I couldn't tell whether I had any day work in September; I worked 17 hours day work in October and I worked 12 hours day work in November; all the rest was piece work.

Q. 12. What other box-makers worked piece work in addition to yourself at that time?

A. 12. All the box-makers worked piece work, but sometimes they have day work, when they have got an extra job to make.

Q. 13. During the time from the first of June to the first of November, 1881, was work in the factory very plentiful or was it scarce?

A. 13. It was very scarce at that time.

Q. 14. During the first half of the year 1881 was work plentiful or scarce?

A. 14. I couldn't tell.

Q. 15. But during the months from the first of June to the first

of November, 1881, you say it was scarce; I want to ask you
215 in that connection whether there was any part of that time that you or any of the box-makers didn't have any work to do.

A. 15. Yes, sir.

Q. 16. Well, about what proportion of that time were you laid off for want of work?

A. 16. Very near every week we were laid off; sometimes a half a day and sometimes a full day, according to the work that we would have.

Q. 17. Well, did this stimulate you to look around and see what work was coming into your department at that time?

Objection.

Objected to by George J. Murray, for Mosler, as leading.

A. 17. Yes, sir.

Q. 18. Were the other box-makers without work a part of the time like you?

A. 18. Yes, sir.

Q. 19. How has it been since the first of January, 1882; have you had to lay off part of the time, or has there been plenty of work?

A. 19. I don't know that we had much the first of the year.

The question being put again to the witness and explained that it meant the whole time since January, 1882, up to date, answered: Ever since we made round-cornered safes we had plenty of work.

George J. Murray, for Mosler, cross-examined the witness, who answered the interrogatories as follows:

Cross-examination:

X Q. 20. How long does it take to make one of these round-cornered safe boxes?

A. 20. That is according to how you work, whether you take your time or, as we call it, "kill yourself."

216 X Q. 21. How long does it take, working as you do ordinarily, to make one of these boxes?

A. 21. Well, I couldn't exactly tell. I got a partner. We work in partnership; also a helper we have got. I finish half and my partner and the helper finish the other half.

X Q. 22. How long does it take you to finish half of one of these boxes?

A. 22. It takes me about two hours.

Q. 23. Then if you were to do all the work yourself you could finish one in about four hours, could you not?

A. 23. Yes, sir.

X Q. 24. When did you make the next round-cornered safe after the first one you made with these bent angle bars in it?

A. 24. I don't know.

X Q. 25. Who made the second one that was made, and when was it made?

A. 25. Mr. Gerwe made the second one a short time after mine.

X Q. 26. Was the punch made when Gerwe made this second one?

A. 26. I don't believe it was.

X Q. 27. When was the punch made?

A. 27. It was made after I made the round safe.

X Q. 28. How long after?

A. 28. I couldn't tell, hardly.

X Q. 29. How many round-cornered safes were made with these bent angle bars before the punch was made?

A. 29. I couldn't tell.

X Q. 30. How many were made in the month of November, 1881?

A. 30. I couldn't tell, as I don't keep account of how many safes get made.

X Q. 31. But you say you saw every safe that was made. Can you tell about how many of these round-cornered safes were made in November, 1881?

217 A. 31. No, sir.

X Q. 32. Were there any safes made like Goehler Exhibit Model Mosler Round-Cornered Safe No. 1 or like Goehler Exhibit Model Mosler Round-Cornered Safe No. 2 in October, 1881?

A. 32. I couldn't tell whether they were made in October; I know that there were two made like this. (The witness taking in his hand Goehler Exhibit Model Mosler Round-Cornered Safe No. 1.)

X Q. 33. Can't you tell when they were made and who made them?

A. 33. No, sir; I couldn't tell when they were made; I believe Mr. Gerwe and Mr. Piehl made them.

X Q. 34. When was the first round-cornered safe of any kind made in the Mosler Safe & Lock Company's factory?

A. 34. I couldn't tell; I was told by some person that there were some in the old factory on Pearl street; that was before I worked there.

X Q. 35. How many safes were made like either of the Goehler Exhibits Mosler Models Nos. 1, 2, and 3 while you worked for the Mosler Safe & Lock Company?

A. 35. I only know that there were two made in this style. (The witness referring to Goehler Exhibit Mosler Model Round-Cornered Safe No. 1.)

X Q. 36. Then you don't know that any was made as Goehler Exhibit Mosler Round-Cornered Safe No. 3?

A. 36. No, sir.

X Q. 37. Do you know what the Goehler Exhibit Mosler Model Round-Cornered Safe No. 3 represents?

A. 37. I don't know what you mean by that.

X Q. 38. I mean to ask you if that model looks like anything you ever saw.

A. 38. No, sir.

X Q. 39. Are you sure that during the year 1881 there

218 were only two round-cornered safes made prior to November and that those two safes were made like Goehler Exhibit Model Mosler Round-Cornered Safe No. 1?

A. 39. I don't know how many were made, but the two I saw were made like No. 1.

X Q. 40. Is it possible that there could be more than two made like the model No. 1 prior to November, 1881, or is it possible that others could have been made like model No. 3 without your knowing it?

A. 40. It is possible that more than two of No. 1 could have been made, because at that time I was setting up boxes, first part 1881, and safes could have heen made like No. 3 at the time I was setting up boxes.

X Q. 41. Up to what time in 1881 were you setting up boxes?

A. 41. Until April 30, 1881.

X Q. 42. Is it possible that more than two round-cornered safes like Goehler Exhibit Model No. 1 could have been made between April 30th and November 1st, 1881, without your knowing it?

A. 42. No, sir.

X Q. 43. Then you are willing to swear, are you, that there were not more than two round-cornered safes made at the Mosler Safe & Lock Company's factory between April 30th and November 1st, 1881?

A. 43. There was none made that I know of.

X Q. 44. Were any safes made at the Mosler Safe and Lock Company's factory between April 30th and November 1st, 1881, which had round corners and were constructed like Goehler Exhibit Mosler Round-Cornered Safe No. 3?

A. 44. I don't know.

X Q. 45. Would you know it if there had been any made like that, or could any be made without your knowing it?

A. 45. I couldn't tell. I believe there could have been some made without my knowing it.

219 X Q. 46. How many round-cornered express boxes were there made at the Mosler Safe and Lock Company's factory between April 30th and November 1st, 1881?

A. 46. I don't know.

X Q. 47. Would they be made in your department?

A. 47. No, sir.

X Q. 48. In what department would that be made?

A. 48. Well, there was only one man that made them.

X Q. 49. Was he in your department?

A. 49. He did at one time. He was not at that time.

X Q. 50. Does it require different classes of workmen than box-makers to make the round-corner express boxes?

A. 50. What is the meaning of that? There is no express boxes got made in the box-maker department, but I made one.

X Q. 51. Can you state what month between April 30th and November 1st the two round-cornered safes you have spoken about were made?

A. 51. No, sir.

Re-examination by JAMES H. MOORE for Goehler:

Q. 52. Assume the Model Goehler-Mosler Round-Cornered Safe No. 3 to be changed as follows—that is, that corner pieces be placed inside to cover the hole appearing where the angle bars meet at the corner; and suppose the angle bar at the right side of the front of the safe to be cut out for the reception of hinges; and suppose the surrounding piece of metal to cover the top and two sides and a small portion of the bottom at each corner, and that another piece is placed in the opening thus made, and that the angle bars in front are covered by pieces, such as the piece now in said model, do you say that no such safe was made by Gerwe in October, 1881?

220 (Objection: George J. Murray, for Mosler, objects to the question as improper on re-examination because the supposed thing has not been testified about or offered in evidence; and, further, because the witness has already testified that there were but two round-cornered safes made between April and November, 1881, and that he could not tell the month when either was made, and that both were made like Goehler Exhibit Mosler Round-Cornered Safe No. 1.)

A. 52. I don't know whether it was made or not.

HENRY MOORMAN.

Counsel for Goehler craves leave to refer at the hearing to letters patent 268,010 and 268,011, granted to George J. H. Goehler for bending angle irons November 28th, 1882.

STATE OF OHIO, *Hamilton County,* } ss:

I, Edward C. Reemelin, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that the foregoing depositions of Anton Stoekle, Leopold Moritz, George Thorwarth, Louis Gerwe, Frederick Bahmann, and Henry Nordman were taken on behalf of George J. H. Goehler, in pursuance of the notice hereto annexed, before me at the office of James Moore, No. 53 Pike's building, Cincinnati, in the county of Hamilton, State of Ohio, on the 7th and 8th days of February, 1883; that each of said witnesses was by me first duly sworn before the commencement of his testimony; that the testimony of each of said witnesses was written out by myself; that the opposing party was represented by counsel during the taking of said testimony, which counsel was present during the taking of said testimony; that said testimony was taken at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio,
221 and was commenced at 9.30 o'clock a. m. on the 7th day of February, 1883, and was continued, pursuant to adjournment, on the 7th, and was concluded on the 8th of said month; that I am not connected by blood or marriage with either of said parties, nor interested, directly or indirectly, in the matter in controversy.

In testimony whereof I have hereunto set my hand and seal of office, at Cincinnati, in said county, this 8th day of February, 1883.

[NOTARIAL SEAL.] EDWARD C. REEMELIN,
Notary Public within and for Hamilton County, State of Ohio.

222 *Interference.*

In the Matter of Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Improvement in Safes, now pending before the Commissioner of Patents.

George J. Murray, Esq., attorney for Mosler.

SIR: You are hereby notified that on Friday, the 16th day of February, 1883, at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, at ten o'clock a. m., I shall proceed to take the testimony of Joseph L. Hall, who resides in Cincinnati, Ohio, and of George Berkmyer, who resides in Covington, Kentucky, and of others, as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

GEORGE J. H. GOEHLER,
By his attorney, JAMES MOORE.

Service acknowledged this 15th day of February, 1883.

GEORGE J. MURRAY,
Attorney for Mosler.

223 Before the Commissioner of Patents.

GEORGE J. H. GOEHLER *vs.* MOSES MOSLER.

In the Matter of the Interference between the Applications of GEORGE J. H. GOEHLER and MOSES MOSLER for Patent for Improvements in Safes.

Depositions of witnesses examined on behalf of George J. H. Goehler, pursuant to the annexed notice, at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, at ten o'clock a. m., on the 16th day of February, 1883.

Present: On behalf of Moses Mosler, George J. Murray; and on behalf of George J. H. Goehler, James Moore.

JOSEPH L. HALL, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and occupation or business.

224 A. 1. Joseph L. Hall; residence, Cincinnati; past 59, between 59 and 60; and I am a safe and lock manufacturer.

Q. 2. Are you acquainted with Michael Hemler, who is now in the employ of the Mosler Safe & Lock Co.?

A. 2. I am.

Q. 3. Do you know his reputation for truth and veracity?

A. 3. I do not.

Q. 4. State how well you know him, how long he was in your employ, and when.

A. 4. I had a great deal of experience with him, from time to time, from the year 1849 to 1865; I cannot give exact dates now as to the time he was employed; I could do it by referring to books, if I had them here.

Q. 5. Are you the same Mr. Hall referred to in the second answer of Michael Hemler in his deposition in this cause, which answer I will read to you?

A. 5. In the first place, I don't know what he means by "Old man Hall," for the reason that there was then a firm E. Hall & Co.; E. Hall was my father; he and I were in partnership together in 1850; we were both of us in charge of the business, and the inference is that he meant me, but my father was the only old man there at that time. The firm of E. Hall and Co. changed to Hall and Dodds & Co. in 1851, and continued under that name for several years; it then changed to Hall & Dodds; then it became Hall, Dodds & Co. again, if my memory serves me right; during much of that time Mr. John H. Gibson was the foreman. As to Mr. Hemler being foreman at that time I have no recollection up to the year 1856 and 1857. Some years afterward, while he was carrying on business as Gibson & Hemler, I remember making them a proposition to buy them out, as they were in difficulty among themselves, and did buy them out; I think that was in 1870 or 1871; I can't give the exact date without referring to my books. I have
225 no recollection what offer I did make him to come, but whatever I did offer he got afterward when he did come.

Q. 6. Has Michael Hemler given depositions in a cause or causes in which you were interested and in reference to facts within your knowledge, and would you from the knowledge thus derived of him believe him under oath?

Objection.

(Question is objected to by George J. Murray, for Mosler, as incompetent, because the witness has already stated that he does not know Michael Hemler's reputation for truth and veracity, and, second, because is is incompetent to call for testimony as to any particular circumstance to impeach the veracity of a witness.)

A. 6. He has; and it is a very difficult matter for me to say that I would not believe him under oath in all cases, for there are many things, perhaps, that I could believe him under oath, except in such cases where he might become very much interested, and in such a case I would not believe him under oath.

Q. 7. Would you in any case believe him under oath where he thought his bread and butter were at issue?

Objection.

(Question is objected to by George J. Murray, for Mosler, for the reasons stated in preceding objection.)

A. 7. That would depend somewhat upon circumstances that might appear at the time.

Cross-examination by GEORGE J. MURRAY for Mosler:

X Q. 8. At what time or what particular circumstance is it upon which you base the opinion stated in your answer that you would doubt Mr. Hemler's veracity in a case wherein he was very much interested?

A. 8. As to the time, I do not recollect; as to the circumstance, it was giving testimony in a case that I had pending before the
226 courts, in which he made statements in relation to a certain bolt being applied to the door and of which he claimed to have been the inventor, and that I had cursed him, called him a fool, and other statements made by him, knowing as he did that such was not the case; nor did I ever make any such remarks as he attributed to me.

X Q. 9. And that is the reason and the only reason, is it, why you would not believe him under oath in a case in which he was largely interested?

A. 9. That is one, but not the only one.

X Q. 10. State any and all others that you remember.

A. 10. I remember at present of but one other in which he made statements that were not as truthful as I considered it should have been under oath. In testifying in a case pending between the First National Bank of Covington and the Hall Safe Lock Company, in which I do not now remember the words, but at the time his testimony was taken I become satisfied that where he was directly interested I could not believe him under oath.

X Q. 11. His testimony in that case was given as an expert, was it not, in relation to one of your safes which had been burglarized?

A. 11. If I remember right, it was.

X Q. 12. How was he interested in that suit or in the other suit in which he gave his testimony about the conical bolt?

A. 12. He was engaged in manufacturing safes as a competitor and showed disposition to be somewhat envious or holding malice toward the Hall Safe and Lock Company or their employees; that is the reason why I should suppose he was an interested party.

X Q. 13. The suit upon the conical bolt patent, of which conical bolt you claimed to be the inventor, was decided against you, was it not, both in the circuit court of the United States for the southern district of Ohio and in the Supreme Court of the United States?

227 Objection.

(Question objected to by James Moore, for Goehler, as irrelevant and immaterial, for this—first, that the circuit court gave no opinion for their action; second, that the Supreme Court held that Mr. Hall was in fact the first inventor, and decided the case upon another ground, in substantiation of which counsel for Goehler now says that he will refer at the hearing of this cause to a copy of the opinion of the Supreme Court in that case.)

A. 13. I do not understand it.

X Q. 14. Did your attorneys in the patent suit upon the conical bolt or in the suit of the First National Bank of Covington call any witness to impeach the veracity of Mr. Hemler?

Objection.

(Question is objected to by James Moore, for Mosler, as irrelevant and immaterial.)

A. 14. I do not now recollect.

X Q. 15. Did you in 1880 have any conversation with Mr. Hemler after he had quit business for himself in relation to his accepting a position with the Hall Safe and Lock Company?

Objection.

(Question is objected to as irrelevant and immaterial.)

A. 15. I have no recollection of it.

JOSEPH L. HALL.

GEORGE BERKMYER, being first duly sworn, deposes and says in answer to interrogatories:

Q. 1. State your name, age, residence, and occupation.

A. 1. George Berkmyer; I am 54 years of age 28th of this month; I reside 50 and 52 Greenup street, in Covington, Ky.; and I am a stockholder, superintendent, and director of the Cincinnati Safe and Lock Company.

228 Q. 2. Do you know Michael Hemler, who is now in the employ of the Mosler Safe and Lock Company; if so, how long have you known him?

A. 2. Yes, sir; I know him; I couldn't say particular how long; I won't tell what I don't know; I know him for twenty-five years.

Q. 3. Do you know his reputation for truth and veracity in this city?

A. 3. I do, according to my own opinion.

Q. 4. Would you believe him under oath?

Objection.

(Question is objected to by George J. Murray as incompetent, as not sufficient foundation has been laid for the question.)

A. 4. No, sir.

Cross-examination by GEORGE J. MURRAY for Moses Mosler:

X Q. 5. Were you formerly employed by the Mosler Safe and Lock Company, and did you then hold the same position Michael Hemler now holds?

A. 5. I was employed in the Mosler Safe and Lock Company and was a stockholder there, and I think I held the same position Michael Hemler holds now.

X Q. 6. Why did you leave that employment?

A. 6. It didn't suit me.

X Q. 7. Did you leave of your own accord or were you discharged?

A. 7. I left on my own account; I told them two months before that I was going to leave by New Year.

X Q. 8. Are you on friendly terms with Mr. Hemler?

A. 8. We meet friendly all the time.

X Q. 9. What single act can you name wherein Mr. Hemler has not acted and told the truth?

229 A. 9. Well I wouldn't need to tell them; I couldn't tell all them what I heard from men and what I know personally.

X Q. 10. Can you name no one act?

A. 10. No, and I won't either; that I didn't keep in my mind, who they were.

X Q. 11. Can you name a single transaction or a single statement that would justify the opinion you have expressed about Mr. Hemler?

A. 11. I will state one. At the time I was working for Hall Safe and Lock Company, or Joseph L. Hall & Co., he gave me an order for a safe, with the sketch to it how the safe had to be made. I made the safe accordingly, and after the safe was finished Mr. Joseph L. Hall came to me, saying, "George, how could you make such a big mistake in making that safe?" I told Mr. Hall "I didn't know that I made a mistake." He took me up to the safe and showed me what was wrong; the safe was higher or wider; the door was made in wrong. I told Mr. Hall "I couldn't help that; I made it according to the plan I got for it." Mr. Hall asked me for that plan, to show it to him. I got the plan and gave it to Mr. Hall. Mr. Hall looked at it, saying, "I can't blame you; it's all made according to plan." He, Mr. Hall, called Mr. Hemler, — asked him how that was. Hemler replied "that he gave me the right plan and right instruction for making that safe." Mr. Hall then showed him the plan that he gave me and said, "It is not George Berkmyer's fault, it is your fault." That was about the middle of the week, and on Saturday, he, Michael Hemler, discharged me from work, saying, "he laid me off for a week or two." The next week I went there to see how soon I could go to work again and I found out my place was filled up by a relation of Mr. Hemler. I went to see Mr. Hall about that—what was up. Mr. Hall told me to go to work right away, again, and I wouldn't do it. I told him I wouldn't ask Mr. Hemler for no work no more. Hall told me to go to work

230 anyhow, and I wouldn't do it; had a long talk with Mr. Hall, and Hall told me "that was just Michael Hemler's doings; if he gets a working man that knows as much or more than he does, he tries to get him out of the way."

X Q. 12. Can you state any other circumstance?

A. 12. I guess that's enough.

X Q. 13. And for the reasons stated in your last answer you would not believe Mr. Hemler under oath; is that so?

A. 13. Not only for that reason, but from what I heard of others beside.

X Q. 14. Well, state what you heard and from whom you heard it.

A. 14. That I couldn't tell no more, as I didn't take particular attention, and I wouldn't name anybody who said so.

X Q. 15. Have you ever worked with Michael Hemler or under him since the incident related in your answer No. 11?

A. 15. I believe I did once or twice work under him for a month or two.

X Q. 16. When and where?

A. 16. When, I couldn't tell particular any more; it was at Hall's Safe and Lock Company some years after.

X Q. 17. When did the incident you have related in your answer 11 about the safe take place?

A. 17. Well, I couldn't tell the year any more; it was in the first six months after Hall moved down where he is now.

X Q. 18. Was it 20 years ago?

A. 18. It is more than 20 years ago; I think it is.

X Q. 19. Have you worked for Mr. Hemler or under him for the last 10 or 12 years?

A. 19. No, sir.

X Q. 20. Will you now say that you were not discharged from the Mosler Safe and Lock Company because you were found incompetent to fill the position of superintendent?

231 A. 20. Yes, sir; I say I was not discharged.

X Q. 21. Did you not have a contract with Mosler Safe and Lock Company to construct safes at a certain price while you was acting as superintendent for them?

A. 21. I had.

X Q. 22. And did you not fall short each time their accounts were made up, and did not the Mosler Safe and Lock Company credit you with several thousand dollars more than you were entitled to under your contract to make up for your shortcomings?

A. 22. That I couldn't tell. They kept the accounts. They told me at the first settlement that I was about $300 short, and that was the only real settlement we had. Before we came to the second settlement they wanted me to throw up the contract and take salary, and so all the work that was done was thrown in on the salary.

X Q. 23. You kept no account yourself, and you did not know at the time what the work was costing?

A. 23. I kept no accounts up to the first settlement. I knew what the work cost; of course I did.

X Q. 24. Then why didn't you know then whether their account was correct or not?

A. 24. I didn't know what their account was. They never showed me a book. I had no right to look into them, and I had to take their word for it.

X Q. 25. Did you not, after you were discharged from the Mosler Safe and Lock Company, go to the foundry of Cordesman and represent that you had an order from Mosler Safe and Lock Company for a casting for a certain vault front belonging to the company, and did they not refuse you, and did not Moses Mosler charge you with going to the foundry and making a wilful and unwarranted misrepresentation?

Objection by James Moore.

(The recital that the witness was discharged is objected to as a willful misrepresentation of the witness' testimony.)

232 A. 25. I wasn't discharged from the Mosler Safe and Lock Company. I stated that before already. I inquired about that casting at Cordesman & Dierker's, saying that Mosler Brothers told me any casting or anything I want I could get from them, and in this opinion I asked Cordesman & Dierker for that casting, and they refused to make it. Mr. Moses Mosler told me I had been there, and I told him yes I was there, and he said I had no right to do so. I told him he had said before I could get any casting I wanted, and then he said he wouldn't give me anything any more—not so much as the black on my nail—and I told him "all right."

X Q. 26. You did not think it necessary to ask for an order of the casting you wanted, did you?

A. 26. I didn't think of that at all. The foreman told me he couldn't do it; that he had no right to do it. I told him to ask Mosler, and he did ask Mosler, and he said, "No; they shouldn't make it."

GEORGE BERKMYER.

STATE OF OHIO, }
Hamilton County, } *ss:*

I, Edward C. Reemelin, a notary public within and for the county of Hamilton and State of Ohio, do hereby certify that the foregoing depositions of Joseph L. Hall and George Berkmyer were taken on behalf of George J. H. Goehler, in pursuance of the notice hereto annexed, before me at the office of James Moore, No. 53 Pike's building, Cincinnati, in the county of Hamilton, State of Ohio, on the 16th day of February, 1883; that each of said witnesses was by me first duly sworn before the commencement of his testimony; that the testimony of each of said witnesses was written out by myself; that the opposing party was represented by counsel during the taking of said testimony, which counsel was present during the

233 taking of said testimony; that said testimony was taken at the office of James Moore, No. 53 Pike's building, Cincinnati, Ohio, and was commenced at 10 o'clock a. m. on the 16th day of February, 1883, and was closed the same day; that I am not connected by blood or marriage with either of said parties nor interested, directly or indirectly, in the matter in controversy.

In testimony whereof I have hereunto set my hand and affixed my notarial seal of office, at Cincinnati, in said county, this 16th day of February, 1883.

[NOTARIAL SEAL.] EDWARD C. REEMELIN,
Notary Public within and for Hamilton County, State of Ohio.

234 (Index omitted.)

235 And upon the back fly-leaf of which said record is endorsed the words and figures following, to-wit:

U. S. Cir. Court, S. D. O., W. D.

THE MOSLER SAFE AND LOCK CO.
vs.
THE MOSLER, BAHMAN & CO. } No. 3568.

It is hereby stipulated and agreed by and betweeen the parties hereto that the testimony to which this is attached may be filed in this cause and read by the parties with the same force and effect as if the said testimony had been regular-y taken in this cause in accordance with the 67th rule, in equity, as amended.

This, however, is not to preclude either of the parties from taking such additional testimony as it may see fit.

(Signed) JAMES MOORE,
Respond'ts Solicitor.

236–355 And afterward, but on the same day as last aforesaid, to wit, on the said the twenty-first day of March, in the year of our Lord one thousand eight hundred and eighty-four, came the said respondent herein as aforesaid, by its solicitor as aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause the certain record of Mosler interferance proceedings, and which said record so as aforesaid filed is clothed in the words and figures as follows, to wit:

* * * * * * *

356 And afterward, to wit, on the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, came the said respondent herein, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause the certain depositions of sundry witnesses heretofore taken on behalf of the said the respondents herein aforesaid before Jere F. Twobig, Esq., a notary public in and for the said the county of Hamilton, State of Ohio, as aforesaid, and which said deposition-so as aforesaid filed *is* clothed in the words and figures as follows, to wit:

357 *Depositions by Resp'd'nt.*

Circuit Court of the United States for the Southern District of Ohio.
In Equity.

THE MOSLER SAFE & LOCK CO.
vs.
THE MOSLER & BAHMANN & CO. } No. 3568.

Examination of witnesses on behalf of the defendants under the 67th rule, in equity, as amended, by agreement of the parties.

Present: George J. Murray, for the complainant, and James Moore, for the defendant.

UNITED STATES PATENT OFFICE.

In the matter of the Interference between the application of George J. H. Goehler, filed February 20, 1882, and the application of Moses Mosler, filed December 27, 1881, No. 48793, "Improvement in Safes."

CINCINNATI, OHIO, DECEMBER 26, 1882.

Sir: You are hereby notified that on Thursday, December 28, 1882, at the office of Geo. J. Murray, Room 28, Wiggins' Block, Southeast Corner of Fifth and Vine streets, Cincinnati, Ohio, at nine o'clock in the forenoon, I shall proceed to take the testimony of Michael Hemler, Max Mosler, Chas. J. Graeser, Theodore Moellers and Julius Mosler, all of Cincinnati, Ohio, and perhaps others, as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

MOSES MOSLER,
By GEO. J. MURRAY, his Attorney.

Service accepted, this 26th day of December, 1882.

JAMES MOORE,
Attorney for Goehler.

UNITED STATES PATENT OFFICE.

In the matter of the Interference between the application of George J. H. Goehler, filed February 20, 1882, and the application of Moses Mosler, filed December 27, 1881, No. 48793, "Improvement in Safes."

Depositions of witnesses examined in behalf of Moses Mosler, pursuant to the annexed notice, at the office of George J. Murray, Rooms 28, 29 and 30, Wiggins' Block, Corner of Fifth and Vine streets, Cincinnati, Ohio, on Thursday, the 28th day of December, A. D. 1882.

Present, George J. Murray on behalf of Moses Mosler, and James Moore on behalf of George J. H. Goehler.

Charles J. Graeser, being first duly sworn, doth depose and say in answer to interrogations propounded by George J. Murray, as follows:

CHARLES J. GRAESER.

Q. 1. State your name, age, residence and occupation?

A. 1. Charles J. Graeser, age twenty, next April; residence, 34 Pleasant street, Cincinnati, Ohio, occupation, clerk.

Q. 2. State where you are at present employed, and how long you have been so employed?

A. 2. Mosler Safe & Lock Company, either seven or eight years.

Q. 3. Are you acquainted with George J. H. Goehler and Moses Mosler, parties to this interference, and, if you are, state how long and how intimately you have known each of them?

A. 3. George J. H. Goehler used to be a box-maker at the old factory on Pearl street; that was some three or four years ago. He was afterwards assistant superintendent in the new factory. I just gave him orders; had little to do with him and Mike Hemler. If I was to go out of the factory, and had a special order, I would give it to who I came across first—him or Mike Hemler. I had nothing to do with him outside of business.

Ever since I started in the employ there I have known Mr. Mosler.

Q. 4. You may state whether or not you are familiar with the German language, and, if you are, how well you understand it?

A. 4. I both read, write and speak German; had seven courses of German in the public schools.

Q. 5. In what language do you usually converse when at home?

A. 5. Mostly German.

Q. 6. In what language did you usually converse with Mr. Goehler when business relations brought you together?

A. 6. Both German and English. I generally spoke to him in English, and he answered me in German or English.

Q. 7. Can you state from the various conversations you have had with Mr. Goehler, and the opportunities you have had of hearing his conversation, whether or not he understands the English language?

A. 7. Yes. From the conversations he has had with me he understands English, because he answered me in English.

Q. 8. Do you know whether he can read and write English?

A. 8. Yes, he can read and write English, because I have papers of his in my possession written in English.

Q. 9. I now hand you a paper which is marked on the back "For identification, Edward C. Reemelin, Notary Public," and ask you to state whether or not you have seen that paper before, and if you have, state when, where and under what circumstances?

A. 9. I have seen it before; it was on Saturday night, in Mosler Safe & Lock Company's office. The date was February 11, 1882. I was called upon by Mr. Mosler to translate same into German to G. H. Goehler, which I did in our salesroom, adjoining the office. I read it to him in English through, then I translated it, sentence for sentence, into German. Then read the whole thing to him in German, and he acknowledged them in both English and German, that he understood same. We then went back into the office and I gave the paper to Mr. Mosler, whereupon Michael Hemler signed his name and Goehler refused to do so. I witnessed Mr. Hemler's signature then. In the evening before closing up, Goehler came into the office and spoke to Mr. Mosler, and Mr. Mosler asked me for this paper, and Goehler signed it. I saw him sign it.

The paper referred to is herewith offered in evidence, and the notary is requested to mark the same "Mosler Exhibit A," "A. B. Benedict, Notary Public," and the notary is requested to copy the paper upon the record.

CINCINNATI, O., February 11, 1882.

MOSES MOSLER, Esq.

DEAR SIR: "As it has been reported that we have laid some claim to the invention in round corner safes, made with a bent angle bar, such as you have filed your application for letters patent upon, we desire to say to you that such statements are without foundation, and now say to you that we fully recognize that you are the inventor of such improvements, and that all we did was to construct the safe under your supervision and in accordance with your directions.

"MICHAEL HEMLER."
"G. J. H. GOEHLER."

Witness: C. J. GRAESER.

Q. 10. Are you familiar with the invention in round corner safes, the front and rear frames of which consist of angle bars which have one side cut away and the other side bent around to form a frame, having round corners, and the joints at the corners of the cut-away-side closed by the bending, such as are made by the Mosler Safe & Lock Company, which invention is here in interference. If you are, state when you first became familiar with such invention or heard of it.

Latter part objected to as calling for hearsay, by counsel for Goehler.

A. 10. I don't know anything about the patent exactly, the safe was made at the factory; but I have heard Mr. Mosler often speak about some angle iron frames and also seen a piece of pasteboard which Mr. Hemler had made and shown to Mr. Mosler, but paid no attention to it; that was before Goehler left, but could not give exact time.

Q. 11. When did you first hear Mr. Mosler speak about bent angle bars for safe frames, and state what was said, if you recollect?

A. 11. I did not know the meaning of what they spoke about, but heard them mention the word "bent angle," that's it. I don't recollect the time, but it was the forepart of 1882. I think it was.

Q. 12. Do you know whether it was before or after round corner safes having bent angle bar frames were made by the Mosler Safe & Lock Company?

A. 12. My last answer is wrong. It was before October the 20th, of 1881, I heard that conversation. This is the correct answer to question 11. The conversation was before the safe was made, certainly.

Q. 13. How are you enabled to fix the time as prior to October

20, 1881?

A. 13. Because there was a round corner safe filled about that time that I had seen.

Cross-examination by James Moore, counsel for Goehler.

X-Q. 14. You say that Mr. Mosler instructed you to translate the paper, etc., which Mr. Mosler was that?

A. 14. It was either Mr. Moses Mosler or Mr. Max Mosler that requested me to translate it.

X-Q. 15. Who wrote the paper?

A. 15. Mr. Moses Mosler.

X-Q. 16. Did you see him write it?

A. 16. I don't exactly remember that.

X-Q. 17. How long was it written before the 11th of February, 1882?

A. 17. How should I know if I did not see him write it?

X-Q. 18. When did you first see it?

A. 18. When I was called to translate it.

X-Q. 19. Did you ever have any conversation prior to that time with Moses Mosler about the substance of that paper, or about getting Goehler to sign such a paper?

A. 19. No, Sir.

X-Q. 20. Did you ever hear any conversation upon that subject by Moses Mosler or any one else?

A. 20. In regards the paper? No.

X-Q. 21. Did you ever, prior to that time, hear any conversation between Moses Mosler and anybody else about Goehler being the inventor of bent angle iron for round corner safes.

A. 21. No.

X-Q. 22. Did you ever, prior to that time, hear any conversation about that invention by anybody?

A. 22. I only heard before what I answered to questions 11 and 12.

X-Q. 23. Between whom was that conversation?

A. 23. Mr. Hemler and Mr. Moses Mosler.

X-Q. 24. What did Mr. Moses Mosler say to you when he asked you to go out and translate that paper?

A. 24. I was told by either Mr. Max Mosler or Moses Mosler to translate this paper to Goehler. This was told me in Goehler's presence.

X-Q. 25. Well, did he say, Max or Moses, whoever it was, that

Goehler couldn't understand it?

A. 25. Didn't hear anything of that; simply called me out from back of the office, and requested me to translate it to Goehler.

X-Q. 26. Were Max and Moses both present then?

A. 26. Yes, sir.

X-Q. 27. Who else was present?

A. 27. As well as I can recollect, there was Mr. Hemler.

X-Q. 28. Was there a conversation going on in the office between Moses and Max Mosler and Michael Hemler, or any of them at the time you were called to transtate the paper?

A. 28. Don't know.

X-Q. 29. Is your desk or place where you work so situated, with reference to the office where they were, that you could have heard a conversation, if any had taken place, between them?

A. 29. No. They were in the front of the office, and I in the rear.

X-Q. 30. You say you read the paper in English, and translated it, sentence by sentence, into German, to Goehler; and, as I understand you, Goehler understood both the English and German. Why did you translate it into German if he understood it in English?

A. 30. I did not say that he understood when I read it to him in English, but I said that I asked him in English and German after I got through translating, if he understood same.

X-Q. 31. Well, in answer to your question, what did Goehler say, give me his exact words, if you can?

A. 31. He said yes in German, and also in English.

X-Q. 32. How often did you ask him that question, as to whether he understood it?

A. 32. As I said before, once in English and once in German.

X-Q. 33. And his answer on both these occasions was limited to the word "yes," in English and in German, is that right?

A. 33. Yes.

X-Q. 34. Are you quite sure that Moses Mosler was there when you were asked to translate this paper?

A. 34. Yes sir.

X-Q. 35. Are you equally sure that Max Mosler was present at that time?

A. 35. Yes.

X-Q. 36. Where were they respectively standing or sitting, in the office?

A. 36. They were standing, to the best of my reccollection, at the first window North of the office door. I think they stood, but I am positive they were all four at the window, Goehler, Mike, Moses and Max.

X-Q. 37. You are just as certain are you not, that all four were there at that time, as you are of anything you have testified to?

A. 37. Yes, I am certain they were there.

X-Q. 38. What do you mean by seven courses in German?

A. 38. I mean seven different grades in the public schools.

X-Q. 39. Did Goehler at the time that you read this paper, attempt to read it himself?

A. 39. No, sir. He never touched the paper. I had it in my hand altogether.

X-Q. 40. And if he had not said "Yah" and "Yes," you would not have known that he understood it, would you?

A. 40. The man can understand German, I am sure he understood it when I translated it to him.

X-Q. 41. Then why did you ask him twice whether he understood it?

A. 41. Had no special reason, but I asked him.

X-Q. 42. Question repeated. Objected to by G. J. Murray, it has been full answered.

A. 42. As I said before, I had no special reason.

X-Q. 43. Well, had you any general reason, or had you any motive whatever in asking?

A. 43. No.

X-Q 44. Then why did you ask?

A. 44. Don't know, but I asked him.

X-Q. 45. Did either of the Messrs. Mosler request you to ask him?

A. 45. No.

X-Q. 46. Was there any conversation at that time between you and Goehler about the paper, or its contents?

A. 46. No.

X-Q. 47. Then, if I understand you correctly, not a word was said by you except the reading of the paper in English, and the translation of it into German, and the question that you put to Goehler twice, as to whether he understood it, and not a word was said by Goehler, except to answer your questions "Yah" and "Yes," am I right about it?

A. 47. Yes.

X-Q. 48. Upon closer recollection, didn't you and Goehler both laugh about something ?

A. 48. Not as I remember.

X-Q. 49. When did you first know you were to be called as a witness in this case ?

A. 49. The day it rained so hard, last week.

X-Q. 50. Prior to this day it rained so hard, did you have any conversation with either of the Moslers, with reference to the conversation that you have described in answers 11 and 12 ?

A. 50. Why, no. Mr. Moses Mosler asked me if I knew anything about this angle iron, and I told him that I knew nothing ; only heard nim mention the word "bent angle" some time ago.

Q. 51. Was that the day it rained so hard, or before that ?

A. 51. The same day.

Q. 52. Since that conversation with Mr. Moses Mosler, had you any conversations with either of the Messrs. Moslers or Michael Hemler, with reference to that paper that you translated, or with reference to Goehler's invention of the cut and bent angle bar. If you did, state with whom you conversed, how often you conversed with each, and when each such conversation took place ?

A. 52. Had no conversation at all with any body as regards the angle iron.

Q. 53. In answer 13, you say there was a round corner safe filled about that time. Do you know when this was filled ; if you do, state how you know ?

A. 53. I know the safe was filled during October ; arouud that date, for I saw the same.

Q. 54. Have you no means of more closely identifying the date than your general recollection. May it not have been in September or November, when that safe was filled ?

A. 54. The safe was filled in October ; and can give exact date by referring back to our reports on file at Mosler Safe & Lock Company.

Q. 55. Describe the safe, it's size, and whether it had bent angle bars in it ?

A. 55. It was our old number 5, I don't recollect the dimensions. It was round angle cornered.

Q. 56. Had it bent angle bars in it ?

A. 56. What is a bent angle bar? I don't know what you mean.

Q. 57. Do you know how that round corner was produced in that

safe?

A. 57. No.

Q. 58. Now what relation is there between the conversation that you heard, as stated by you in your 11th and 12th answers, and the filling of the safe in question, such that you know that the one preceded the other in time?

A. 58. I don't know what you are trying to get at. It is not plain enough.

Q. 59. Question repeated. The officer will please read and explain to witness.

A. 59. For this reason. I know when the safe was filled, and I know this conversation about bent angle was before that time. I heard these words: "bent angle." I heard no conversation.

Q. 60. You have not yet answered the question I understand you to have stated, that this safe was filled in October, 1881, and you have also stated that you heard the words "bent angle bar" before the safe was filled, and you have further stated that you know that you heard these words before the safe was filled. What I want to know, is, how do you now know that you heard these words before the safe was filled?

A. 60. Good memory.

Q. 61. Is it your experience that your memory is of such a reliable character that you can, without relation to other events surrounding any particular transaction, always swear to the exact time when it occurred?

A. 61. When I know a thing, I know it.

Q. 62. Which do you know the best, that both the Messrs. Mosler were present, (Max and Moses), when you were told to translate the paper, or that Goehler said he understood it, in German and in English?

A. 62. I remember them both, well.

Examination by G. J. Murray.

R-Q. 63. Was Julius Mosler present at the time you were told to translate that paper?

R-A. 63. Don't recollect.

Q. 64. Did you have any conversation with any one at the time the paper was handed to you except the one who handed you the paper, and told you to translate it to Mr. Goehler?

A. 64. No.

C. J. GRAESER.

MAX MOSLER.

Max Mosler, being first duly sworn, deposes and says in answer to interrogations propounded by George J. Murray, as follows:

Q. 1. State your name. age, residence, and occupation.

A. 1. Max Mosler. 540 Eighth street, Cincinnati, Ohio; age, forty years. Occupation, I am doing trading in old and new safes; my occupations are respectable and multifarious, chiefly buying and selling safes.

Q. 2. How were you engaged in the year 1881?

A. 2. Stockholder and manager of Mosler Safe & Lock Company.

Q. 3. Are you familiar with the invention in bent angle bars for round corner safes, such as are now being made by the Mosler Safe & Lock Company?

A. 3. To a certain extent, yes.

Q. 4. Please state when you first became familiar with such invention, and under what circumstances, if you recollect?

A. 4. Moses Mosler returned from Europe sometime during the month of June, 1881. After his return Moses Mosler and myself had repeated conversations as to the necessity of changing the old style or mode of constructing safes, making a stronger safe by reason of the quality of cement which has degenerated from year to year. Some time after his return he spoke to me about the round cornered safe, the construction of which was left to him entirely, he having charge of the mechanical department, while I had charge of the office. After having decided upon a change in the construction of the safe, I positively recollect of numerous and repeated consultations that Moses Mosler had with Mike Hemler and Goehler in reference to this safe. At some of these I was present, when occasionally they occurred in the office.

Q. 5. When did you first learn that Mr. Moses Mosler had taken steps to have the invention here in controversy patented?

A. 5. I can not give the exact date; it was some time during the latter part of summer or early part of fall of 1881.

Q. 6. Is there any circumstance that you remember by which you can fix the date more definitely?

A. 6. By a copy of a letter written to Mr. Murray, after having called upon Mr. James Moore, in reference to some idea of my own, Mr. Heintz, (book-keeper at the time of Mosler Safe & Lock Company), and myself, had repeated conversations in reference to a safe having

an air chamber, and claimed to be invented by Charles Zircher. I called upon Mr. Moore in reference to this patent, Mr. Heintz informing me at the time that Mr. Moore made an application for said patent Mr. Moore advised me that he did not take out said patent.

Q. 7. How do you fix the date that you first knew of Moses Mosler's first making application by the date of that letter?

A. 7. By calling upon Mr. Murray in reference to safe with air chamber, and his refusal to take any steps in the matter, if my ideas were in conflict with the ideas of safe under construction of Moses Mosler.

Q. 8. I will hand you a letter and ask you if that is the original letter referred to in your former answer?

A. 8. Yes, that is the original.

Q. 9. The letter is offered in evidence and the notary is requested to mark the same "Exhibit Max Mosler Letter."

Q. 9. You may state when that letter was written to the attorney now examining you, and whether it was before or after the time that letter was written, that you had the conversation, as you say, with Mr. Murray about the safe, embodying the ideas of Moses Mosler.

A. 9. The letter was written September the 10th, and the conversation and refusal of Mr. Murray to do anything was when first I called upon him in reference to my idea.

Adjourned till 2 P. M.

Met pursuant to adjournment. Present, same parties. Examination of Max Mosler continued.

Q. 10 The previous question asked whether it was before or after the writing of this letter "Exhibit Max Mosler Letter," that you had the conversation with Mr. Murray about the safe embodying the ideas of Moses Mosler. Please state whether it was before or after the writing of this letter, and you may also state the conversation that took place between yourself and Mr. Murray, or the substance of it, if you can not recollect the exact conversation.

A. 10. It was previous to the writing of the letter. The substance of the conversation was in reference to some idea of mine as to obtaining a patent on safes. Mr. Murray said if it came in conflict with the ideas of Moses Mosler's round cornered safe, he preferred to have nothing to do with it. I assured him that it was a different idea, after which I verbally gave him the details.

Q. 11. Did you at that time understand what the invention of Moses Mosler was?

A. 11. In substance, yes. A round cornered safe, produced by a continuous angle bent cold, so as to form the round corner.

Q. 12. Can you state about the time the Mosler Safe & Lock Company determined to enter upon the manufacture of these round cornered safes?

A. 12. The latter part of summer of 1881 and positively previous to the date of my letter to Mr. Murray, September 10, 1881.

Q. 13. Was there any contract made with any one by the Mosler Safe & Lock Company, having any reference to the round cornered safe, such as they now manufacture, with the bent angle bar frames?

A. 13. Yes.

Q. 14. You may state with whom and when as near as you can remember?

A. 14. With H. H. Warner & Co., H. D. Cary & Co. and numbers of others. The exact date I can not give, some time in the fall of 1881.

Cross-examined by J. Moore, Attorney for Goehler.

X-Q. 15. Can you state approximately the time you called at the office of Mr. Moore, to learn whether there was a patent in existence for an air chamber in a fire-proof safe?

A. 15. Approximately, between the 20th of August and the 9th of September, 1881.

X-Q. 16. Is the book or memorandum you have just examined a diary, and does it contain memoranda from day to day, of events that took place, if not, what do you find in the book that enables you to say, that it was between the 20th of August and the 9th of September, 1881, that you made the call in question?

A. 16. The book or memorandum I have just examined and refered to in previous questions, was an almanac, so as to enable me to get the approximate time when I was in the city previous to September 10th, I find that I am positive that it was approximate between the aforesaid dates.

X-Q. 17. You are a brother of Moses Mosler, are you not?

A. 17. Yes.

X-Q. 18. Do you now own any stock in the Mosler Safe & Lock Company?

A. 18. None.

X-Q. 19. Please state when you became a stockholder, and when you ceased to be such, in that company?

A. 19. I became a stockholder June 26, 1879; I sold my stock to the firm, February 1, 1882, but the papers, transfers and etc., were not executed until February 11, 1882.

X-Q. 20. During the time that you were a stockholder, were any patents granted to the concern, upon any invention whatever?

A. 20. The concern never invented anything. What improvements were invented by individual stockholders of the firm, or concern, they individually applied for patents, to which they were individually entitled to.

X-Q. 21. Were any patents granted during that time to any stockholder or officer of the concern?

A. 21. I individually did not invent or patent anything, but Moses Mosler, president of the Mosler Safe & Lock Company, did invent and patent a safe, the letters of patent I have seen, besides which I believe he has a nnmber of inventions on patent wheelbarrows.

X-Q. 22. What was the date or about the date of the patent on safes, and was it assigned to the Mosler Safe & Lock Company?

A. 22. My previous answer was a safe. This was not assigned to the Mosler Safe & Lock Company?

X-Q. 23. Was the improvement secured by that patent manufactured by the corporation?

A. 23. While I held stock, the firm had not negotiated with Moses Mosler for the manufacture of said patented safe.

Question repeated.

A. 23. In addition to foregoing answer, there was but one front of said safe made, and if my memory serves me right, Moses Mosler paid for this. Said front was not made at the factory, but was a brass model made by Homan.

X-Q. 24. Then it is a fact, is it not, that there never was a safe made by the concern embodying that improvement, and is it not further the fact, that the reason for this was that the improvement was deemed, when the cost of manufacture was taken into consideration, valueless?

A. 24. While I held stock there was no safe made having that improvement. The patent was not considered valueless, as it was the intention to manufacture said improvement at some future day. This I can substantiate by others, and my testimony, that said improvement was shown to J. W. Warner and F. B. Bowen, partners, I believe, of

H. Warner & Co., at the time when these parties were negotiating with the Mosler Safe & Lock Company for an improved make of safes, and promises were made to these parties that in time this improved safe would be made for them.

X-Q. 25. Who, if you know, paid the expense incident to soliciting the patent now in interference, Moses Mosler or the Mosler Safe & Lock Company?

A. 25. I am not in the position to know.

X-Q. 26. You were a stockholder when the application was made and the first fee paid. Didn't you know when you left the corporation, whether it, the corporation, had paid so far, or Moses Mosler had paid it?

A. 26. I was a member of the firm when the application was made, but as to cash transactions, my position in the firm was such that gave me no time to interfere with the cashier's duties. Therefore, can not tell as to cash transactions.

X-Q. 27. What office did you hold in the Mosler Safe & Lock Company?

A. 27. By name, manager, but my duties were correspondent, examination of safes in paint rooms, and minor details, incident to office work.

X-Q. 28. Was there any understanding or contract between yourself and brothers, the other stockholders of the concern, as to whether, when an invention was made by either, in safes, the patent upon it should belong to the concern?

A. 28. There was none.

X-Q. 29. When you described to your attorney, Mr. Murray, your idea of an air chamber in a fire proof safe, did he ask you, or did you ask him, as to whether there was conflict between it and the invention of Moses Mosler?

That part of the question which assumes that Mr. Murray is the witness' attorney, is objected to, as such fact no where appears in the testimony of the witness.

A. 29. My answer is the same as that given to question 7 above, and question 10.

X-Q 30. You have not answered my question; the officer will again read it to you, and you are again asked to answer it.

A. 30. I fully understand the nature and character of an oath, and

can not give a more direct answer to this repeated question, than my answers to questions numbers 7 and 10.

X-Q. 31. You misunderstand the point of the question. Your answer 10 recites that a conversation occurred between yourself and Mr. Murray, as to whether there was conflict between your idea and Moses Mosler's idea or invention, and the question asks you who first suggested that there was conflict, or who first asked the question, yourself or Mr. Murray?

A. 31. At the time of my calling upon Mr. Murray, I believe that the round cornered safe was the only invention of Moses Mosler in safes, for which he was applying for patent. I was aware of this fact, as well as Mr. Murray. In speaking to him of my ideas, before giving him details, his question was, if this was in conflict with Moses Mosler's improved safe. I answered, no. I then went into details and gave him my ideas.

X-Q. 32. Then, as I understand you, it was Mr. Murray that asked the question or suggested the inquiry as to whether there was conflict between your idea and that of Moses Mosler. Am I right?

A. 32. He may have put the question in that manner.

X-Q. 33. Had he then made application for patent for round cornered safe, for Moses Mosler?

A. 33. I know of his consulting Mr. Murray in reference to the round cornered safe, previous to this, my visit; but can not tell how far he had progressed in the application of the patent.

X-Q. 34. Well, if you know that Mr. Murray and Moses Mosler had, prior to that time, consulted with reference to taking out a patent for a round cornered safe, will you please state more explicity just what you know, how many consultations had they had, what took place at each, and in what form was the invention in question, before Mr. Murray. Was there a drawing or model, and state how you know these things?

A. 34. Mr. Moses Mosler was authorized by all the stockholders to furnish an improved safe. He suggested the idea of the round cornered safe, he was given *carte blanche* to perfect the improvement, and am therefore not enabled to know how many consultations he may have had with Mr. Murray, or what took place at each. Moses Mosler reported to the stockholders from time to time how he was progressing. Can not say whether he supplied Mr. Murray with drawing or model, at the date of my letter, September 10th.

X-Q. 35. Then, as I understand your testimony, you knew at that date, to-wit: September 10, 1881, that Mr. Moses Mosler had consulted with Mr. Murray, with reference to taking out this patent, because at a full meeting of the stockholders, theretofore had, full authority was given to Moses Mosler to invent such a safe; is that right?

Question objected to by Mr. Murray misrepresenting the testimony of the witness, by stating that this authority was given at a full meeting of the stockholders.

A. 35. September 10th, 1881, I was aware that Moses Mosler had consulted Mr. Murray in reference to a round cornered safe with angels bent cold. Mr. Moses Mosler was getting up this safe by authority, and with the consent of the stockholders.

X-Q. 36. The last question was intended to ask you whether you knew that these consultations had taken place from the fact that full authority by the stockholders to make this invention had been given to Moses Mosler. This question you have not answered; please answer it.

A. 36. Not from that fact, but from the reports of Moses Mosler, and my individual knowledge of the employment of Mr. Murray.

X-Q. 37. How did you derive this individual knowledge of the employment of Mr. Murray, to solicit a patent prior to September 10, 1881, upon round cornered safe?

A. 37. By having confidence in a brother and fellow stockholder whom the stockholders saw fit to select to the honorable position of president of the Mosler Safe & Lock Company, and when Moses Mosler repeatedly remarked in the office, "I am now going to consult Mr. Murray in reference to the round cornered safe," that he made no misrepresentations.

X-Q. 38. Then, when you say as you did, in your answer 36, that you had "individual knowledge" of the employment of Mr. Murray for this purpose, you mean that Moses Mosler repeatedly remarked in the office, "I am now going to consult Mr. Murray in reference to the round cornered safe." Am I right?

A. 38. My individual knowledge was strengthened further after the consultation with Mr. Murray in reference to the so called my idea of safe with air chamber. Mr. Murray and myself had quite a chat in reference to the practicability of the round cornered safe of Moses Mosler, for which he was employed to obtain letters patent.

X-Q. 39. Are you able to answer question 38, yes or no; and, if not, why not?

A. 39. I am willing to re-affirm that Mr. Murray was retained from the fact that there was no object on the part of Moses Mosler to willfully make any misrepresentations, he having full power to act, beside my conversation with Mr. Murray, in reference to the round cornered safe, convinced me that he was retained. I have no reasons or desires not to give a more direct answer, for I firmly and conscientiously believe that my answers fully cover the question.

X-Q. 40. Do I understand you to decline to answer 38 by the word "yes" or the word "no?"

A. 40. If you will condense into one the four questions and answers interwoven into each other, I may be enabled to give a direct answer.

X-Q. 41. Then you can't answer question 38, just as it stands, with a "yes" or a "no?"

A. 41. If you will condense 36 and 38, I will, if possible, and if within my knowledge.

X-Q. 42. In answer 38 you say your "individual knowledge was strengthened further after the consultation with Mr. Murray," and subsequently you say you had quite a chat with him in reference to the practicability of the round cornered safe. Will you please state more fully exactly or substantially what was said by each upon this question?

A. 42. Our chat was to this effect: I asked his opinion in regards to the safe.

X-Q. 43. Well, what did he say in answer to that question?

A. 43. Thought it was a good thing.

Adjourned till to-morrow morning at 9 A. M., Friday, December 29, 1882.

JULIUS MOSLER.

December 29, 1882, met pursuant to adjournment; present, same attorneys.

Max Mosler, by agreement of counsel, is excused from testifying this A. M.

Julius Mosler, being first duly sworn, deposes and says, in answer to interrogatories propounded by G. J. Murray, as follows:

Q. 1. State your name, age, residence and occupation.

A. 1. Julius Mosler, age 35 ; residence, 557 West Court street, Cincinnati, Ohio ; occupation, vice-president and treasurer of the Mosler Safe & Lock Company.

Q. 2. State if you are familiar with the invention in angle bars cut out and bent to form frames for round cornered safes, and, if you are, state when you first became familiar with such invention, and under what circumstances.

A. 2. I am no mechanic, however. After the angle was shown me, I understood the nature of the construction. I became familiar shortly after the return of my brother, Moses Mosler, from Europe. He returned in June, 1881. This object was to cheapen the manufacture of safes. With this in view, he spoke of making a round cornered safe having a cold bent angle, which angle he showed me from time to time, cut from a card.

Q. 3. Can you state more particularly the time when he first showed you the way the angle bar was to be made by cutting a card, and what, if anything, was said at that time or subsequently?

A. 3. Can not definitely state time, but think it was shortly after his return from Europe. He said and showed me the improvement on safes and cheapening of same, by making the round cornered safe.

Q. 4. Can you state approximately the time, within a month or two months ?

A. 4. I think it was in July of 1881, as far as I can recollect.

Q. 5. Did you or not understand the improvement that was explained to you at that time, to be the same bent angle bar that is now, and has been for the last year, used by the Mosler Safe & Lock Company, in their round cornered safes?

Objected to by James Moore, as leading.

A. 5. I did understand it to be the same as we are making.

Q. 5½. Are you acquainted with George J. H. Goehler, one of the parties to this interference, and, if you are, state how long and how intimately you have known him?

A. 5½. I am acquainted with George J. H. Goehler, and have known him for several years. He acted as foreman for the Mosler Safe & Lock Company. During the time he was employed there I had occasion to speak to him often.

Q. 6. Were your conversations with him carried on in the English or German language?

A. 6. Both English and German.

Q. 7. Are you able to state from your acquaintance with Mr. Goehler, and the conversations you have had with him, whether or not he is familiar with the English language, or what familiarity he has with the language?

A. 7. From what I know, I am under the impression that Mr. Goehler is conversant and familiar with the English language.

Q. 8. I will now hand you paper marked "Mosler Exhibit A., A. B. Benedict, Notary Public," and ask you to state when, if ever, you saw that paper before?

A. 8. I saw the paper the day it was signed. I also saw the paper the same day before it was signed.

Q. 9. Please state what took place at the time that paper was signed, or before it was signed?

A. 9. We first learned that Mr. Goehler was going to leave our employ, and was going into the employ of one of our competitors, Mosler, Bahmann & Co. When we learned that he was about to leave us, Moses Mosler had Mr. Goehler called into the office. Mr. Moses Mosler read this paper, but before reading this paper, and in conversation with Mr. Goehler, he questioned Mr. Goehler, asking him if the angle bar in round cornered safes, if it was not his (Moses Mosler's) idea, and, if he, Moses Mosler, was not the patentee and inventor of the round cornered safe and angle iron, to all of which Mr. Goehler assented, and said that he lays no claim to it; or words to that effect. When this paper was to be signed, Moses Mosler also called Michael Hemler, superintendent of the Mosler Safe & Lock Company, to whom he read the paper, and asked him whether he was willing to sign the same. He agreed to sign same, but Mr. Goehler refused, stating that he did not know the nature of the contents of the paper, as it was in English. Moses Mosler then asked Charles Graeser to translate the same to him, when Graeser and Goehler we t to an adjoining room, when Graeser translated the same; when they returned, and Mr. Goehler willingly signed the paper. I say that I now recollect that Mr. Goehler did not sign the paper at once, but later in the day.

Q. 10. Was there any conversation took place between Mr. Mosler and Mr. Goehler, or between yourself and others, in the presence of Mr. Goehler after he returned from the adjoining room with Mr. Graeser?

A. 10. Moses Mosler and myself conversed. I said to Mr. Goeh-

ler, that Mosler, Bahmann & Co. no doubt wanted him to make this round cornered safe, which he did not deny saying that it did not make any difference.

Q. 11. How long after that interview was it, if you know, before the paper was signed, and you may state if there were any other interviews or conversations between that time and the time the paper was signed, in the presence of Mr. Goehler?

A. 11. A few hours. In the mean time, Moses Mosler asked Hemler why Goehler wished to leave. Mr. Hemler said that Goehler was offered two dollars more salary, by Mosler, Bahmann & Co., than we were giving him, and if we gave him the same he would remain, after which Moses Mosler had Goehler called and offered him the same salary, whereupon he promised to remain with the Mosler Safe and Lock Company.

Q. 12. What, if any reason, did Mr. Goehler give for refusing to sign the paper after he and Mr. Graeser returned from the adjoining room?

A. 12. Can't remember that he stated any reason.

Cross-examined by James Moore.

X-Q. 13. You have stated that when Moses Mosler called Goehler into the office, that he (Goehler) admitted in substance that Moses Mosler was the true inventor of the improvement in question, and you further state that when Mr. Mosler explained the paper to him, he refused to sign it, and that after it had been translated and explained to him in German, by Graeser, he still refused to sign it. What I want to know is, why, if he admitted that Moses Mosler was the first inventor, he (Goehler) refused to sign that paper?

A. 13. Can not say what reason he had for refusing.

X-Q. 14. You say that when you learned that Goehler was about to leave, this paper was drawn, and Hemler and Goehler called into the office, and each requested to sign the paper, was Hemler also about to leave, and, if not, why was he asked to sign the paper?

A. 14. The reason that they were both asked to sign the paper, was because they carried out the ideas of Moses Mosler, and didn't want either of them to lay claim to the improvement.

X-Q. 15. Then you were afraid, were you, that they would both lay claim to the patent?

A. 15. It was not fear.

X-Q. 16. You say in answer 14, that they were each asked to sign the paper, because they carried out the ideas of Moses Mosler, and you didn't want either of them to lay claims to the improvement, and in your last answer you say, in substance, that you were not afraid of that, then I repeat, why did you ask either of them to sign the paper?

Objection. Question objected to by Mr. Murray, as misleading, as it does not appear from the witness' testimony, that he, the witness, did ask Goehler to sign the paper, or that the witness has any interest in the invention here in controversy.

Objection. Counsel for Goehler desires to protest once, and for all, against instructions being given to a witness under the guize of an objection to a question, and he now asks counsel for Mosler to state of record, whether in the future he will or not write such objections, as he desires to make and pass them to the officer to be entered upon the record.

Counsel for Mosler states that he knows no rules which requires him to write his objections and hand them to the officer. The rules require that the reason for the objection be stated in order to be taken advantage of, and if opposing counsel does not desire these reasons to go of record, he must not give occasion for them by his questions. The record so far will show that there have been but few objections taken by counsel for Mosler, while he believes that more than half of the questions asked upon cross-examinations are open to objection, and states now of record that he will make no objection to any fair question, and such objections as he does make will be made in the ordinary way.

A. 16. I did not ask either of them to sign the paper.

X-Q. 17. The last question is repeated, except that instead of yourself, Moses Mosler be understood?

A. 17. Moses Mosler no doubt had his own reasons for asking them to sign the paper.

X-Q. 18. Your attention is called to the first part of your answer to question 9, which the officer will read to you, and you are asked to state whether this does not mean that Goehler was asked to sign the paper, because he was going to leave, and, if it does not mean that, what does it mean?

A. 18. In as much as Goehler was asked, at the time he wanted

to leave, whether he intended to make the round cornered safe at Mosler, Bahmann & Co., and his answer, "it made no difference," and Moses Mosler no doubt to avoid any future controversy, asked Mr. Hemler and Goehler to sign the paper.

X-Q. 19. Who were in the office upon that occasion?

A. 19. As far as I remember, the entire clerical force.

X-Q. 20. Give the names of every one who was in a position to hear what was going on?

A. 20. Moses Mosler, Goehler, Graeser, myself, and I think, Hemler.

X-Q. 21. Was Hemler called in before Goehler?

A. 21. Do not recollect.

X-Q. 22. In answer 2 you say, that Moses Mosler showed you, from time to time, after he returned from Europe, the invention of a bent angle iron, cut from a card. How often did he show you this card?

A. 22. Can not exactly state the number of times he showed it to me, but he showed it to me at differient times; besides, I saw the angle cut out of paste-board in Mike Hemler's office, November 4, 1881.

X-Q. 23. I want to know more particularly the number of times that Moses Mosler showed you this card, before November 4, 1881. Did he show it to you a hundred times or fifty, or two or three times?

A. 23. I can only state, as in my previous answer, that I don't remember the number of times.

X-Q. 24. Did he show it to you more than once?

A. 24. He did.

X-Q. 25. Do you think you saw it five times?

A. 25. Again I will state that I do not remember the number of times.

X-Q. 26. But, can you not give some approximation as to how often he spoke of it, and showed you the card?

A. 26. I can not approximately say how often he spoke of it, or how often he showed me the card.

X-Q. 27. Was it the same card he showed you every time?

A. 27. That I can not affirm.

X-Q. 28. Did you see any difference between the card he showed you at one time and another?

A. 28. As I said, I am no mechanic, but whenever he showed me the angle, it appeared to me the same.

X-Q. 29. Describe the piece of paper it was upon, with reference to size, color, etc.

A. 29. It was on one of the Mosler Safe & Lock Company's business cards, three by four inches; can not describe color, as we have different colors of cards.

X-Q. 30. Was it cut out in form, or penciled, or partly cut and partly penciled?

A. 30. The card was cut forming an angle.

X-Q. 31. How did that cut upon that card compare with the card you saw November 4th, in Michael Hemler's room?

A. 31. The formation of the angle appeared to me the same.

X-Q. 32. Describe the piece of paper as well as you can, with reference to size, color, etc., upon which this cut was made, that you saw in Mike Hemler's room.

A. 32. It was not a piece of paper, but brown pasteboard, and as near as I can recollect, it was four by six inches.

X-Q. 33. What time of the day was it, on November the 4th, when you saw this piece of pasteboard?

A. 33. In the morning.

X-Q. 34. Can't you state more closely the hour?

A. 34. Think it was between the hours of 9 and 12.

X-Q. 35. Do you commonly visit Hemler's room; if not, what was the special occasion that induced you to visit it then?

A. 35. I visit Hemler's room occasionally, but upon this occasion I looked for him and found him in his room, and gave him an order to move a safe.

X-Q. 36. Did Hemler call your attention to this piece of pasteboard, and did you have any conversation with him about it?

A. 36. He did not call my attention, but when I entered the room, he was handling it. Having seen a card, and seeing this pasteboard bent in the same manner, it attracted my attention.

X-Q. 37. What did you say about it, and what did Hemler say about it, at that time?

A. 37. There was nothing said by either of us, in reference to it.

X-Q. 38. What became of the card that Moses Mosler showed you, if you know?

A. 38. Don't know.

X-Q. 39. When he showed you that card, what did he say about it?

A. 39. He said, in that manner, he could cheapen the cost of manufacturing safes.

X-Q. 40. Is this all he said, the first time he showed it to you?

A. 40. No, sir.

X-Q. 41. What else did he say?

A. 41. He said it would make a stronger safe, and it would be a great improvement.

X-Q. 42. Well, is that all he said?

A. 42. He may have said more, but I don't remember. No doubt he did.

X-Q. 43. Was that piece of paper cut and bent, or only cut?

A. 43. It was cut and bent, as he could not give it the formation unless it was cut.

X-Q. 44. Then that is the reason you know it was cut, is it?

A. 44. It is.

X-Q. 45. Did you have this card that Moses Mosler showed you, in your hand, or in your possession, if so, how long?

A. 45. I had the card in my possession for a few moments, simply to see the formation.

X-Q. 46. Were you in the office November 4th, when Goehler showed a card or a piece of paper of this character, to Moses Mosler?

A. 46. I may have been in the office, yet did not see Goehler show Moses Mosler a card or piece of paper, as Mr. Goehler visited the office frequently, and I did not always pay attention to what Mr. Goehler came into the office for.

X-Q. 47. Then you did not know that Goehler had called upon the morning of the 4th of November, and exhibited a card so cut, to Moses Mosler?

A. 47. I did not.

X-Q. 48. After Moses Mosler had shown you this card, that he did show you with whom, if any person, did you speak about it, before the 4th of November?

A. 48. My conversation was entirely with Moses Mosler, in reference to the card.

X-Q. 49. When you saw the card in Michael Hemler's hands, did you tell Moses Mosler about it if?

A. 49. I think not; as Hemler received all his instructions by Moses Mosler, and thought it not necessary to say anything about it.

X-Q. 50. Then you did not think it was a matter of sufficient

importance to call to the attention of Moses Mosler?

A. 50. I always thought it very important, and as Moses Mosler gave his instructions, presumed that he knew all about it.

Adjourned till 2 P. M., Friday, December 29, 1882.

2 P. M. Met pursuant to adjournment. Present, same parties.

X-Q. 51. How do you know that it was the 4th of November that you saw the cut in Michael Hemler's room, that you refer to?

A. 51. I gave Hemler an order to move a certain safe, and made the charge for moving that safe upon that day.

X-Q. 52. Had you ever spoken to Michael Hemler prior to that day, anything with reference to getting up a round cornered safe, or to bending angle iron, to form a round cornered safe. If you had, state when, how often, and what was said?

A. 52. I never did. That was entirely left to Moses Mosler. I asked Hemler what he thought of the round cornered safe, and his reply was, he thought it was a good thing.

X-Q. 53. When did you ask him that?

A. 53. I can not state time.

X-Q. Was it before or after November 4, 1881?

A. 54. Before.

X-Q. 55. Where were you when you asked that question?

A. 55. I don't recollect. It was in the building—the office or factory.

X-Q. 56. Was that before or after the round cornered safe No. 5, that was filled during October, 1881, was made?

A. 56. Can't say.

X-Q. 57. When you asked Hemler that question, didn't you have reference to safes of that construction?

Objection. Question objected to G. J. Murray, as indefinite.

A. 57. I did, to the round cornered safe.

X-Q. 58. Were the round cornered safes made before the 4th of November, 1881, in the factory?

A. 58. Do not recollect when the first one was made, as I have no record.

X-Q. 59. Do you know whether there were any round cornered

safes made in the factory before Moses Mosler showed you that card that was cut out and bent?

A. 59. I repeat, I do not remember.

X-Q. 60. How many modes of making safes with a round corner has been practiced in the factory, at any time since the business was started, until the 1st of January, 1882?

A. 60. Don't know.

X-Q. 61. Was there any mode but one, to-wit; the one shown in the card that Moses Mosler showed you?

A. 61. Don't remember.

X-Q. 62. Will you please take a piece of paper and cut it, and bend it into the form that the card was that Moses Mosler showed you, that has been several times referred to?

A. 62. Am not sufficient mechanic to do so.

X-Q. 63. You will please examine pen sketch shown to you, and state whether that correctly represents the mode in which that card was cut?

A. 63. I will say that I am ignorant of the meaning of this drawing, what I saw was the formation of the angle.

X-Q. 64. Did you observe the form of the cut in the card, or was the card cut.

A. 64. The card was cut, but I paid no attention to the form of the cut.

X-Q. 65. All that you recognized as I understand you, was the fact that the card was bent around, so as to show the character of corner that the safe should have when made with a bent angle iron. If I am not right in this, please state wherein I am wrong?

A. 65. You are right. This angle that I saw was to be applied to the new method of making safes.

X-Q. 66. Sketch referred to in question and answer 63, is hereby offered in evidence, marked "Julius Mosler Sketch." No. 1.

X-Q. 67. You will please examine the piece of paper now shown to you, and state how the same corresponds, so far as cut and bend are concerned with the card referred to, shown by Moses Mosler?

A. 67. As I stated before I am no mechanic, and can not state how it corresponds. The piece of paper referred to in above question and answer marked, "Julius Mosler Exhibit, No. 2," is offered in evidence.

X-Q. 68. Then when you asked Michael Hemler as to his

opinion of the round cornered safe, you referred simply to a round cornered safe, regardless of the mode by which that round corner was produced. If that be not right, state wherein it is wrong?

A. 68. When I asked Michael Hemler's opinion about the round cornered safe, I always had in view the angle iron, which was shown me to facilitate and cheapen the manufacture of the safes.

X-Q. 69. Did you tell Michael Hemler at that time, that you had that angle iron in view when you asked that question?

A. 69. I did not, but supposed he knew it, as he had his instructions from Moses Mosler to make this safe.

X-Q. 70. But you had never spoken to Hemler about it (I mean the cut and bent angle iron), nor heard Moses Mosler or any one else speak to him about it, had you?

A. 70. I heard Moses Mosler speak to him about it, giving Hemler orders, to which I paid but little attention, as all had full confidence in Moses Mosler, to direct the construction of this safe.

X-Q. 71. You now say, you heard Moses Mosler speak to Michael Hemler about a round cornered safe. I want you to state when, where, and exactly what was said.

A. 71. This was said in the building; when, I can not remember; nor can I repeat what was said.

X-Q. 72. You say in answer 70, that you "all have full confidence in Moses Mosler to direct the construction of this safe." Will you please be more specific in stating what this confidence refers to? Do you mean confidence in his integrity, or do you mean confidence in his mechanical ability, to devise and perfect a particular structure?

A. 72. I mean his integrity and his capability of directing a construction of his invention.

X-Q. 73. When did you make your first contract to make safes for Warner?

A. 73. Can not state time.

X-Q. 74. Can you make any approximation to the time?

A. 74. I can't.

X-Q. 75. Do you think it was fifty years ago?

A. 75. Was not born then.

X-Q. 76. Was it five years ago?

A. 76. We had one contract, I believe, seven years ago, with Mr. Warner. That was before the Mosler Safe & Lock Company was

incorporated. Can not state when the second contract was made.

X-Q. 77. How long do you think it was before the 4th of November, 1881, that Moses Mosler showed you the cut and bent card heretofore referred to?

A. 77. I can not state definitely.

X-Q. 78. Do you think it was days before, weeks before, or months before?

A. 78. It was some months before.

X-Q. 79. You were then informed, were you not, that the invention of a round cornered safe was then complete?

A. 79. I was not informed that it was complete.

X-Q. 80. Well, were you informed it was incomplete; or what was your understanding, in this particular, at that time?

A. 80. I had no particular understanding about it.

X-Q. 81. Well, did you get any information of any character, as to the mode of constructing that safe, from either of the prior interviews with Moses Mosler, when he showed you the card. If you did, state specifically, what that information was?

A. 81. I did. It was to construct the safe of one plate of iron, fastened into cold bent angles.

X-Q. 82. I understand you to say, that you don't know when the first safe, embodying that construction, was made; but upon the assumption that no such safe was made, prior to the 4th of November, 1881, how do you account for the delay?

A. 82. I have no reason to know. It was left to Moses Mosler, the entire matter.

X-Q. 83. And all that you knew about it, as I understand you prior to the 4th of November, 1881, was what Moses Mosler said to you as you have heretofore testified. Is that right? And, if not, make it right.

A. 83. That is right. I gained all my information in reference to the round cornered angle iron safe from Moses Mosler.

X-Q. 84. Letters patent were granted to Moses Mosler March 22, 1881, No. 239,110. As you are treasurer of the Mosler Safe & Lock Company, will you please state who paid the various expenses incident to obtaining this patent—Moses Mosler or the Mosler Safe & Lock Company?

A. 84. It has been so long since that I can not recollect how the

charge was made, but, by referring to the cash book or his account, I will be enabled to give a correct answer.

JULIUS MOSLER.

MAX MOSLER,

The cross-examination of Max Mosler is now resumed, Friday P. M., December 29, 1882, by James Moore:

X-Q. 44. You have stated several times that your "individual knowledge" that Mr. Murray had been retained to solicit a patent for round corner safe, and that Moses Mosler had had consultations with him upon that subject prior to September 10, 1881, was strengthened by your chat with Mr. Murray. What I want to know is this: What did Mr. Murray have at that time either before him or otherwise in his possession showing that invention, model, drawing, templet or what else?

A. 44. How am I to know what Mr. Murray may have had?

X-Q. 45. Then Mr. Murray did not refer to having anything in his possession of the character indicated, did he?

A. 45. From the full knowledge that Mr. Murray had he seemed to be well posted. The question of his having models or drawing of the invention was not broached.

X-Q. 46. In answer 43 you state that he (Mr. Murray) "thought it was a good thing;" you have not stated anything else that he said at that time, but in your last answer you say in substance that Mr. Murray had full knowledge of it and was well posted. I want to know what other conversation took place by which you are enabled to swear that he was well posted upon the matter?

A. 46. His full knowledge of the invention convinced me of his being posted, otherwise I should not have asked for an opinion.

X-Q. 47. Question repeated.

A. 47. I repeat the above answer, and as to my other conversation with Mr. Murray which was upon the idea of my safe.

X-Q. 48. Well, then, if I understand you correctly, nothing was said with reference to a round cornered safe or patenting it at that time by Mr. Murray, except what is contained in your 43d answer, "thought it was a good thing." If I am wrong about this, and he said anything else about it, please state it.

A. 48. This question I fully answered in answers to questions

numbers 10, 31 and 38, and herewith make repetition of same.

X-Q. 49. In neither of the answers do you repeat or attempt to repeat a single word said by Mr. Murray upon that subject, to-wit: The round cornered safe, but, in answer 38, you say "Mr. Murray and myself had quite a chat in reference to the practicability of the round cornered safe," etc.: and in answer 43 you have stated that he (Mr. Murray) "thought it was a good thing," and in no portion of your deposition have you stated or attempted to state anything that Mr. Murray said except as last quoted. What I want to know is, what the "quite a chat" was. State the conversation.

A. 49. I can not give the full detailed conversation, but can only repeat, if required, the substance of same.

X-Q. 50. State "substance of same."

A. 50 After finishing my private conversation with Mr. Murray in reference to safe with air chamber, the subject of round cornered safe was then broached. At the conclusion, and after quite a chat with Mr. Murray upon the question, I asked his opinion of the round cornered safe. He replied he thought it was a good thing.

X-Q. 51. Well, if you had a chat with Mr. Murray about the round cornered safe, did it not appear from that chat in what form that invention had been presented to him, or how he had derived his knowledge of it, whether by a safe so constructed, an angle bar cut and bent, a drawing, or a templet?

A. 51. I can not tell, nor could I tell from appearances at that time what Moses Mosler may have given or imparted to Mr. Murray.

X-Q. 52. Did you explain the mode of cutting and bending the angle iron then to Mr. Murray, or did he explain it to you, or, if anything was said by either that was descriptive of the method or construction, state what it was.

A. 52. In our conversation we did not go into details as to the mode or construction of the safe.

X-Q. 53. Did he tell you that Moses Mosler had described or illustrated it to him in any way.

A. 53. He did not tell me.

X-Q. 54. Then you assumed that he knew of the invention, from the fact Moses Mosler reported to the stockholders that he had consulted with Mr. Murray about it. Is that correct?

A. 54. My inferences were drawn from the fact of my knowledge that Mr. Murray was retained to apply for letters patent of the

round cornered safe constructed by Moses Mosler and Mr. Murray's seeming full knowledge of Moses Mosler's round cornered safe.

X-Q. 55. Well, how did yon know he was retained if not from the report of Moses Mosler?

A. 55. Other direct knowledge than by me repeatedly previously answered I have not, with this addition of my knowing that Mr. Murray was the attorney for Mr. Moses Mosler, and had obtained for him letters patent previously.

X-Q. 56. Well, that is an admission that question 54 is correct in substance, is it not?

A. 56. No. My answer to that question is correct.

X-Q. 57. You have stated that Moses Mosler was authorized fully by all the stockholders to invent and construct such a safe. Was this at a formal meeting of the stockholders, and regularly entered up in the minutes of the corporation?

A. 57. Moses Mosler had authority and consent of the stockholders, who held all the stock with the exception of one hundred dollars. At an informal meeting of the above four largest stockholders. Gatherings of an informal character were not spread upon the minutes.

X-Q. 58. Will you please state more explicitly, if you can, the terms or the spirit of this authority? Was it to construct a stronger safe and cheaper, or was it to construct a round cornered safe cheaply, or was it to devise and construct a round cornered safe which should be made upon angle bars which were to be cut and bent cold?

A. 58. The spirit that actuated the four leading stockholders was for Moses Mosler regardless of time or cost to invent a better and stronger safe, and if possible a cheaper mode of construction.

X-Q. 59. How long was it after this meeting of the stockholders that you had the interview above referred to with Mr. Murray?

A. 59. This first interview took place after Moses Mosler's return from Europe, and subsequent almost daily interviews took place in the office and at Mosler's residence in the evening. I was present at these meetings until my departure for the summer. Mr. Murray's interview with me took place between the 25th of August to the 10th of September, 1881.

X-Q. 60. At some of these interviews, prior to your consultation with Mr. Murray, did Mr. Moses Mosler explain his invention?

A. 60. Yes, in substance.

X-Q. 61. Did he use a drawing, a templet, a model, or what, to explain it?

A. 61. He used a piece of paper or card.

X-Q. 62. Will you please take a piece of paper now handed you and cut it or bend it into the form that Moses Mosler did at that interview before the 10th of September?

A. 62. This exhibit marked "Max Mosler Exhibit No. 2, Alfred B. Benedict, Notary Public." My following statement and description of these angles and experiments were explained to me from time to time as progress was made by Moses Mosler who had charge of this. The first angle Exhibit No. 2 was abandoned owing to the necessity of welding overlapping corners. The further experiments were to the extent of cutting a piece or pieces out, so as to enable the angle to be bent cold and the cut pieces joining.

Adjourned till to-morrow at 1 P. M., Dec. 30, 1882.

Saturday, Dec., 30, 1882, 1 P. M. Met pursuant to adjournment. Present, same parties.

X-Q. 63. Subsequently to the presentation by Moses Mosler, of the cut of which the Max Mosler exhibit No. 2, is a copy, did he submit to the stockholders or to you, any other sketches or cuts intended to represent a mode of cutting and bending this angle iron. If he did, you will please take paper and produce *fac-simile* as nearly as possible of each, and state the time and circumstances, when each such exhibit was shown to you?

A. 63. Yes. Moses Mosler almost daily made sketches and cut patterns out of paper, showing what progress he was making with the safe. I paid but little attention to these, owing to my office duties and his having entire charge of the improvement; besides which the stockholders had implicit confidence in Moses Mosler's ability to construct or invent the required safe. I can not produce *fac-simile* of these drawings or of paper models, nor can I give the exact dates.

X-Q. 64. Were you present at the office of the Mosler Safe & Lock Company, on February 11, 1882, when the "Mosler Exhibit A" was presented to George J. H. Goehler for his signature?

A. 64. I was at the factory of the Mosler Safe & Lock Company, February 11, 1882, between the hours of 10 A. M. and 12:30 P. M., but I was not present when "Exhibit A" was presented to Mr. Goehler.

X-Q. 65. You state substantially, in answers 13 and 14, that con-

tracts were made with H. H. Warner & Co., H. D. Carey & Co. and numerous others, whereby the Mosler Safe & Lock Company agreed to manufacture safe with rounded corners for these parties, and I understand you to say, that these contracts were severally made before September 10, 1881. I want to know, first, were these contracts in writing? Second, I want you to state particularily every firm with whom such contract was made; give the date of each contract, and state whether these contracts are within your control, so that copies of them can be attached to your deposition.

Objection: Question objected to by Mr. Murray, as misrepresenting the testimony of the witness.

A. 65. Contracts were made, or negotiations pending for the subsequent delivery of the improved safe to the parties named, some time in the fall of 1881. I can not recollect the names of all the firms, nor can I give dates. These contracts are not within my control, nor copies of them.

X-Q. 66. Do I understand you to say that there was any contract entered into in writing, prior to the 4th of November, 1881, for the manufacture and delivery of round cornered safes, in which the angle irons in controversy here, were to be incorporated? If so, state with whom any such contract was made, and whether the Mosler Safe & Lock Company have got a copy or duplicate of it?

A. 66. I do not recollect that contracts were made prior to that date, and am not in a position at present to state whether the Mosler Safe & Lock Company have copies or duplicates of the negotiation or contracts.

X-Q. 67. Your attention is called to your answer 4, in which you state, "after having decided upon a change in the construction of the safe, I positively recollect of numerous and repeated consultations that Moses Mosler had with Mike Hemler and Goehler, in reference to this safe. At some of these I was present, when occasionally they occurred in the office," meaning a safe made with rounded corners by means of cut and bent angle bars, as I understand it. What I want is, that you state specifically every such consultation, and state who (Hemler or Goehler, or both) was present at such consultations, and state the time and place as nearly as you can when each such consultation took place.

A. 67. It would be impossible for me to state how many, and when

these consultations took place. To such consultations that I paid any attention, I heard Moses Mosler giving instructions in reference to the improved safe, principally to Mr. Hemler, and occasionally to both Mr. Hemler and Goehler.

X-Q. 68. Can you locate any one such consultation, with reference to time and place, at which George J. H. Goehler was present? If you can, do so.

A. 68. I can the place—office and superintendent's room of Mosler Safe & Lock Company, but can not give time.

X-Q. 69. State all who were present at this consultation, and as you know that the subject under discussion at it was the cut and bent angle bars now under discussion, state what each party said in terms or substance as nearly as you can, and state the month, if you can, in which it occurred.

A. 69. Not alone this one consultation took place, but others at which Mike Hemler. Mr. Goehler, Moses Mosler and myself were present. The subject of the discussion was the improved round cornered safe. I took but little part therein. I can not give the month.

X-Q. 70. I again ask you if you can locate, with reference to time and place, any one consultation to which George J. H. Goehler was a party, and that occurred prior to November 4, 1881, and in which the subject discussed or mentioned was a round cornered safe or an angle bar, such as we have under consideration, either invented or to be invented. If so, I want you to state the particulars of it, so far as you recollect.

A. 70. I can not locate any particular consultation, but recollect of numbers of such consultations at which George J. H. Goehler was present, and I am almost positive they did occur prior to November 4, 1881, and the substance of the subject was a round cornered safe with angle bent, said angle cut in some manner so that the cut parts would close or join; the object was to do away with blacksmithing, which, in the manufacture of safes, always has been a serious drawback, as also to be enabled to use a continuous plate of iron for sides, top and bottom of safes that could be bent at the corners.

X-Q. 71. Were these consultations in German or English?

A. 71. Mr. Moses Mosler and Mr. Hemler sometimes spoke in both languages, Mr. Goehler understanding them in both, but invariably replying in German.

X-Q. 72. You understand German, do you not?

A. 72. Yes.

X-Q. 73. Can you repeat any one single sentence uttered by George J. H. Goehler at any one of these consultations? If so, do so in English, and state where such sentence was uttered, and when, as nearly as you can.

A. 73. I can not locate any one of these consultations in particular, but at those at which I was present Mr. Goehler had very little cause to make remarks, as he only was the party to obey instructions given him by Moses Mosler or Michael Hemler.

X-Q. 74. Question repeated.

A. 74. I recollect of his receiving an order; his reply was "yah" or "yes," in English.

X-Q. 75. Please state what that order was.

A. 75. There was quite a number. I can not give this particular one.

X-Q. 76. Then, as I understand you, all that you recollect of the language uttered by George Goehler at any of these consultations was "yah," which he said in answer to an order given to him, and you do not recollect what that order was. If this is not right, correct it.

A. 76. This answer of "yah," I gave when you asked me to locate a certain reply. I do not recollect the order.

X-Q. 77. Was there at any of these consultations, so far as you observed, anything representing the invention, such as a safe, cut and bent angle bar, model, drawing or templet? If so, describe it.

A. 77. I recollect that at one of these consultations an angle was then made of paper, such as Moses Mosler showed to me in the office, but I can not describe how it was cut out.

X-Q. 78. Do you recollect who were present at this consultation, and when and where it occurred, and what, if any thing, was said about that piece of paper?

A. 78. I can not positively state who was present, nor when or where it occurred; subject of discussion was the manufacture of safe with the bent angle making a round cornered safe as per paper model.

X-Q. 79. State if you know what experiments were made in iron in cutting and bending angle bars in pursuance of Moses Mosler's invention; state the character of each experiment that you know of having been performed, when and where each such experiment was per-

formed, and state by whom each was performed, and all who were present.

A. 79. It is impossible for me to know in reference to question, as I but occasionally went into the factory.

X-Q. 80. But I have understood you to state that there were repeated, if not daily consultations between the stockholders, in reference to the progress of this invention, and at each of which Moses Mosler reported progress. Do you recollect, with time, place and circumstance, any reports so made, giving experiments and their character?

A. 80. I do not.

X-Q. 81. I have understood you to state that Moses Mosler had perfected this invention, in so far as it could be designed by drawing or cutting card boards. At a time, not long after his return from Europe, and some months before November 4th, of that year, I further understood you to say that there was an interview upon the part of the stockholders, to manufacture such safes as early as practicable. What I want know is, why you delayed to make experiments in iron up to the 4th or 5th of November, if I am right in assuming that no such experiments were performed in the factory, prior to 4th of November, 1881.

A. 81. Moses Mosler returned from Europe early in June, 1881, but a few days after his return, the stockholders gave him full power to perfect, invent and construct an improved safe. I had nothing to do with the experiments, but am positive that the round cornered safe was spoken of some time in September, 1881.

X-Q. 82. But did it not occur to you, as a stockholder, whose financial interests were involved, when Moses Mosler reported that he knew a mode of bending angle irons, to insist upon experiments being tried promptly, in order to determine whether the mode thus reported would be practically operative?

A. 82. I did not, having confidence in Moses Mosler, and knowing that he would do his utmost.

X-Q. 83. In answer 3, you use this language: "To a certain extent, yes;" and answer 11, you say, "in substance, yes." Both of these have reference to your knowledge of the invention in question, prior to November in 1881. What I want to know is, that you state more particularly than the above, just what you knew yourself of the progress of the invention at that time, and without reference to your confidence in Moses Mosler?

A. 83. My knowledge of the invention, prior to that time, was that safes were not to be constructed as per my "Exhibit Max Mosler, No. 2;" but this safe was to be so constructed so that the an le was to be cut or made in some manner; if cut, to enable the pieces cut to join closely, to do away with blacksmithing, and to use a continuous plate of iron, bent at the corners.

Re-examined by G. J. Murray.

R-Q. 83. In your cross-examination you referred to a certain patent taken out by Moses Mosler, and of which style of safe there was but one or only a model made. Was that the only patented improvement in safes invented by Moses Mosler, or was that safe or model made in accordance with letters patent dated March 22, 1881?

A. 83. The patent safe of Moses Mosler, of which there was a model made, is not his only safe invention. He has another patent dated March 22, 1881, which has the beveled or octagon corner on the door flanges, and which patent the Mosler Safe & Lock Company are now using and have been using for almost a year or over past.

R-Q. 84. Did you ever, while you were with the Mosler Safe & Lock Company, hear Mr. Goehler state or claim that he was the inventor of improvement in round cornered safe, or the bent angle bar for the same, or did you ever hear any one say or intimate that Mr. Goehler had made any improvement in safes?

A. 84. No.

R-Q. 85. Was it or not generally known in the factory of the Mosler Safe & Lock Company before you severed your connection with the concern that Moses Mosler had made application for letters patent for round cornered safes having the angle bar cut out and bent, which improvement or invention is here in controversy?

Objection. Objected to by Mr. Moore, because it has appeared that the witness was not familiar with the hands in the factory or with their knowledge.

A. 85. Yes, such is my impression.

R-Q. 86. When did you first hear that any one questioned or doubted that Moses Mosler was the inventor of the improvement in angled bars for round cornered safes, such as are now made by the Mosler Safe & Lock Company?

A. 86. Within the last two or three weeks.

R-Q. 87. You may state from whom you learned that there was any controversy.

Objection. Objected to by Moore as irrelevant immaterial.

A. 87. From G. J. Murray.

Re-cross by Moore.

R-X-Q. 88. Does the Mosler Safe & Lock Company pay a royalty to Moses Mosler for the use of his patent referred to in question and answer 83?

A. 88. I d n't know.

R-X-Q. 89. Did you ever know the Mosler Safe & Lock Company to pay a royalty to any of its stockholders for any invention for which such stockholder held a patent?

A. 89. Not while I held stock; but Moses Mosler several times spoke of making an arrangement with the firm for royalty for the use of his invention in safes, dated March 22, 1881.

R-X-Q. 90 Did you ever hear Goehler say anything about who was the inventor of the invention now in question?

A. 90. No.

MAX MOSLER.

CHARLES GRAESER.

Charles Graeser re-called and examined by G. J. Murray.

Q. 1. You have testified before in this case, and have been sworn, have you not?

A. 1. Yes, sir.

Q. 2. Did you, just after you had given your deposition before, request to be re-called for the purpose of correcting or explaining some part of your said deposition?

A. 2. Yes, sir.

Q. 3. Well, make such explanation as you desire?

A. 3. When I said there were four standing at the first window, then I mentioned the names of Goehler, Hemler, Moses and Max Mosler. It should have been Moses and Julius Mosler, Hemler and Goehler.

Cross-examined by Moore.

X-Q. 4. To whom did you make statement that you desired to be re-called?

A. 4. To Mr Julius Mosler.

X-Q. 5. How long after you left here was it that you had this conversation wirh Julius Mosler?

A. 5. About ten or fifteen minutes.

X-Q. 6. Had you spoken to any person whatever, in the meantime, about what you had testified to? If so, to whom?

A. 6. Mr. Julius Mosler.

X-Q. 7. Was Julius Mosler the only person to whom you spoke about your testimony, before you expressed a wish to be re-called?

A. 7. Yes, sir.

X-Q. 8. State all the conversation that occurred between you and Julius Mosler, before you expressed a wish to be re-called.

Objection. Question objected to by Murray, as misrepresenting what the witness has said.

A. 8. I told him that I made an error in giving testimony, about where I mentioned the names of Max and Moses Mosler, Goehler and Hemler, and asked him what I should do in regard to it.

X-Q. 9. What did Julius Mosler say to you before you said that?

A. 9. Why, he did not say anything, as I came down and told him in regards this, and asked his advise.

C. J. GRAESER.

JOHN THEODORE MOELLERS.

John Theodore Moellers, being first duly sworn, deposes and says. in answer to questions put by G. J. Murray, as follows:

Q. 1. State your name, age, residence and occupation.

A. 1. John Theodore Moellers, age 43, residence 199 George street, Cincinnati, Ohio. Occupation, machinest, safe maker.

Q. 2. Where are you now engaged, and how long have you been in your present employment?

A. 2. Mosler's Safe & Lock Company, since the 20th or 25th of February, 1882.

Q. 3. How were you engaged before you went to work for the Mosler Safe & Lock Company?

A. 3. I was working for Mosler, Bahmann & Co.

Q. 4. Do you understand, and are you familiar with the invention of round cornered safes having angle bars cut out and bent round, such as are now used by the Mosler Safe and Lock Company?

A. 4. Yes, sir.

Q. 5. State when and where you first learned or heard of such invention, and give all the circumstances that took place at that time as nearly as you can recollect.

A. 5. The first time I ever saw or made them, it was about eight or ten years ago. I made them similar to the way we are making them now—I mean express boxes. They were cut out similar to the way we cut them out for safes, only left little more iron on to lap over for the welding.

Q. 6. I only ask you about the round corner for safes, such as are now made of an angle bar cut out to bend around without overlapping, such as are now used in the round cornered safes made by the Mosler Safe & Lock Company. Tell me when you first saw an angle bar or corner so cut out and beat, and where you saw it, or who first told you of its being done?

A. 6. Saw it at Mosler, Bahmann & Co.'s. It must be in the first part of February, 1882, about two or three weeks before I left. Charles Rippe first told me of its being done.

Q. 7. State what he said, and how he came to talk to you about it.

Objection. Objected to by Moore as irrelevant and hearsay.

A. 7. He said he thought it was a cheaper way to make safes, and even a better way, and then he came to show me the corner made, he said, by the Mosler Safe and Lock Company.

Q. 8. Who is Rippe?

Objection. Objected to by Moore as immaterial.

A. 8. He is one of the stockholders and foreman of Mosler, Bahmann & Co.

Q. 9. Was anything said at that time about Mosler, Bahmann & Co. going to make safes of that kind?

A. 9. Well, they said they never heard about it before, not exactly that they wanted to make them. They never said anything to me before that time about wanting to make them; they said it was a cheaper way to make them.

Q. 10. Was anything said afterwards? If so, what?

Objection. Objected to by Moore, hearsay and irrelevant.

A. 10. Yes, I came in the office one time, and Mr. Heintz and

Rippe had something to talk and show about a piece of paper bent round and marked off with a pencil, and then they wanted to close it up for me, so I should not see it; then Rippe said he might as well see it, and then he showed me and Heintz, cut it out with a knife, and said that was the way they were making safes at Mosler Safe & Lock Company. Then they said they troubled and bothered themselves to find out how it had been made, and, if we wanted to make them, we would not have that trouble any more; we could go right ahead.

Q. 11. You say he, meaning Mr. Heintz, said they troubled and bothered themselves about making it. Who troubled and bothered, themselves about making it?

Objection. Objected to by Moore, as irrelevant and hearsay.

A. 11. I should think they meant Mosler Safe & Lock Company. They mentioned no name but the Mosler Safe & Lock Company.

Q. 12. Was the first angle that Rippe showed you, an iron angle or a paper angle, or what was it?

Objection. Objected to by Moore, as before.

A. 12. An iron angle.

Q. 13. Was that angle cut out or bent in Mosler, Bahmann & Co'.s shop, if you know?

A. 13. Well, I could not say that; he said it came from Mosler Safe & Lock Company, that is the way they made them.

Q. 14. Was it possible that angle could have been made in Mosler, Bahmann & Co'.s shop, without your knowing it?

Objection. Objected to by Moore, for that it does not appear that the witness had sufficient familiarity with the shop to know about that matter, and because it is irrelevant and immaterial.

A. 14. Well, they told me that angle came from Mosler Safe & Lock Company. The blacksmiths were under my control, and could not have made it without my knowledge, and except I ordered them.

Q. 15. Did you or not see any other pieces, such as are now used by the Mosler Safe & Lock Company, while you were at Mosler, Bahmann & Co'.s? I mean such as are used in their round cornered safes?

Objection. Objected to by Moore, as irrelevant and immaterial.

A. 15. Yes, I did. I seen a piece of malleable iron, what they riveted in the inside of the frame, on the front frame, on the inside corner.

Q. 16. Could that have been made in Mosler, Bahmann & Co.'s, while you were there, without your knowing it, and are you able to state whether the piece was cast from the same pattern, as the corner pieces now used by the Mosler Safe & Lock Company?

Objection. Objected to by Moore, as irrelevant and immaterial.

A. 16. No, it could not have been made there, because there were no patterns there. It was cast from the same pattern as the corner pieces now used by the Mosler Safe & Lock Company.

Q. 17. How long was it before you left Mosler, Bahmann & Co.'s that you saw this cast malleable corner piece?

Objection. Objected to by Moore as irrelevant and immaterial.

A. 17. It was on Monday, in February, the first day Goehler came there. If I am not mistaken it was the 21st day of February.

Q. 18. How long does it take to get malleable castings after they have been ordered?

Objection. Objected to by Moore as irrelevant and immaterial.

A. 18. As much as I know, it takes three to four weeks, or longer.

Adjourned till 10 A. M., Tuesday, January 2, 1883.

January 2, 1883, 10 A. M., met pursuant to adjournment. Present, same parties.

Q. 19. Did you have any conversation about the bent angle bar for round cornered safe frames, such as are now made by the Mosler Safe & Lock Company, with any other officer of the Mosler, Bahmann & Co., before you left their employ?

Objection. Objected to by Moore, as irrelevant immaterial and hearsay.

A. 19. Yes, sir.

Q. 20. State when, with whom you had such conversation, and where it took place.

Objection. Moore makes same objection as before.

A. 20. I think it was about two weeks before I left, may be three; I could not say so particular, with the old man Bahmann, president of the Mosler, Bahmann & Co., and in the saloon on Front street, right near to the factory.

Q. 21. Please state what was said in that conversation, and, if you can not give the exact words, give the substance as nearly as you can.

Objection. Moore objects as before.

A. 21. He, Bahmann, asked me what I thought about that round cornered safe business. I said if there was anything in round cornered safes Hall would have got them up ten years ago, because I made express boxes like that about eight or ten years ago

Q. 22. What round cornered safes was he speaking about?

Objection. Moore objects as before.

A. 22. The round cornered safes made at the Mosler Safe & Lock Company's.

Counsel for Goehler objects to the whole of this deposition, for the reason that it is irrelevant and immaterial, and a great part of it hearsay; and, relying upon his rights, declines to cross-examine the witness.

JOHN THEODORE MOELLERS.

MICHAEL HEMLER.

Michael Hemler, being first duly sworn, deposes and says, in answer to questions propounded by G. J. Murray, as follows:

Q. 1. State your name, age, residence and occupation.

A. 1. Michael Hemler, age 50 years, residence 337 Brown street, Cincinnati, Ohio. Occupation, superintendent at the Mosler Safe & Lock Company.

Q. 2. Please state how long you have been engaged in the manufacture of safes, either as workman, foreman, superintendent, or other employment in the same line; in short, state when you commenced, and how you have been employed since you began the business of manufacturing or construction of safes.

A. 2. I commenced serving my time in 1847, with Mr Charles Urban. In 1850, after my time was out, I commenced to work for old man Hall. I have been working at different parts of safes for three or

four years there, for Hall. Then he made me foreman of the shop. I staid with him then till 1867, remained foreman and superintendent at last, till 1867. From there I went to Louisville and started business for myself—the safe business. The firm was first Ross & Hemler; after eight months it changed to Gibson & Hemler. In 1871 Mr. Hall made me a proposition that he would buy me out, and give me $3,000 salary, providing that I came back to Cincinnati and take general charge of his factory again. I staid with him till the last day of 1874; then I started into business again with E. H. Walton. The firm was Walton, Hemler & Co. I remained in that firm until July, 1881; then I went to work for the Mosler Safe & Lock Company, as superintendent of their factory, up to the present time.

Q. 3. Are you acquainted with George J. H. Goehler and Moses Mosler, parties to this interference, and, if your answer be yes, state how long you have known each of them?

A. 3. I have known Mr. Goehler from the time I made engagement with Mr. Mosler; I never knew him before that. I have known Mr. Mosler for several years before that, I can't exactly state how long.

Q. 4. Are you familiar with the invention in round cornered safes, embodying, in their construction, an angle bar, having one of its sides cut out, and the opposite side bent around to form a round cornered frame, such as are now being made by the Mosler Safe & Lock Company?

A. 4. Yes, sir.

Q. 5. State when you first became familiar with such invention, and when and under what circumstances you became familiar with it?

A. 5. Mr. Moses Mosler spoke to me about the round cornered safe shortly before he went to Europe. After he came back from Europe, he mentioned the matter again; asked me whether if I had done anything in the matter. I told him I had studied over it in making the round cornered safe. He told me then that he was very anxiour to see how they looked. Then I told Mr. Goehler to give instructions to the blacksmith to have a frame made of the usual size, so to make a round safe, about the same shape as we made the round cornered express boxes. After that Mr. Moses Mosler cut out several pieces in paper or cards, to show me how to make a round corner that is not quite so round as the corners on the round cornered express boxes. Then Mr. Moses Mosler gave me particular instructions to push the thing ahead, provided that he

wanted to make nothing else but the round cornered safes. So I went to work on Mr. Moses Mosler's idea, and made several of those safes. One morning, I could not exactly state whether it was the 2d or 3rd of November, in 1881, I asked Mr. Goehler why he didn't push the matter a little, and get some of those angle frames cut out; he did not give me any satisfaction. I went back up stairs into my office and I commenced cutting out a corner out of brown pasteboard, similar to what Mr. Moses Mosler showed me. While I was doing that Mr. Goehler came up into the office and looked on; then I told Mr. Goehler that this is pretty near the corner that I want, and told him to get one made out of iron, then we can see whether the cut is exactly right or not. Just then Mr. Julius Mosler came up into the office and told me that I had better get ready, that I had to go away to attend to some safe moving. Before I went away I told Mr. Goehler after he bends that corner, and, if he finds it don't come exactly right, to take the machinist and stay at it until it comes right. When I came back from safe moving, it was after 12 o'clock the same day. Goehler had several corners bent—one or two, that morning, and I think he showed it to Mr. Mosler, one corner that was all right, pretty near the thing. After dinner I told Mr. Goehler that I wanted to get another that has not got quite so sharp corners as he had. Then I wanted to make, after that corner, a steel templet, so I can make the die and the punch to punch them out.

Q. 6. State the time, the month, and year as near as you can, when Mr. Moses Mosler explained to you how he wanted this angle bar cut out and bent to form a round cornered frame.

A. 6. When he first spoke to me about it, it was in the first part of January, 1881; then he spoke again of it when he came back the same year in July, and from that on.

Q. 7. How long had you been with the Mosler Safe and Lock Company when Mr. Moses Mosler first spoke to you about this bent angle frame?

A. 7. About six or seven months.

Adjourned till 2 P. M.

2 P. M. Met pursuant to adjournment. Present, same parties.

Q. 8. Please state whether or not a mechanic skilled in the art of safe making would be enabled, from instructions such as given you by Moses Mosler, to cut out and bend an angle bar in the manner they

are cut out and bent, making round cornered safes, such as are now being made by the Mosler Safe & Lock Company.

Objection. Question objected to by Moore, as incompetent and leading.

A. 8. No, there would not be a great job for any mechanic. There is not much of a job for any skilled mechanic to find that cut suitable for that purpose.

Q. 9. Did you or not understand the invention here in controversy from the instructions given you by Moses Mosler prior to the time you had given your instructions to Mr. Goehler?

Objection. Objected to by Moore as leading.

A. 9. I understood everything of it.

Q. 10. How long was it before the time that you gave the instructions to Mr. Goehler to make that bent angle in iron, which you say was about the 2d or 3rd of November, that you first explained the invention to Mr. Goehler?

Objection. Objected to by Moore as making assertions not warranted by the testimony and leading.

A. 10. It was several weeks before that, I could not state exactly how long.

Q. 11. When did you first hear that Mr. Goehler laid any claim to the invention here in controversy.

Objection. Objected to by Moore as immaterial.

A. 11. After he left the Mosler Safe and Lock Company.

Q. 12. Please examine the paper now shown you marked "Mosler Exhibit A., A. B. Benedict, Notary Public," and state if that is your signature to that paper?

A. 12. Yes, sir, that is my signature.

Q. 13. Did you read yourself or have that paper read to you before you signed it, and please state whether or not you understood its contents at the time you signed it, and state also under what circumstances you signed it, who were present at the time it was signed by you, and what took place.

Objection. Objected to by Moore as irrelevant and immaterial.

A. 13. I read it myself, and Mr. Moses Mosler, in reading it off

afterwards, and I could not see anything wrong, I signed the paper. I did fully understand the contents of the paper at the time I signed it. Mr. Goehler was there, Mr. Moses Mosler, and, I think Julius Mosler. I signed it, and Goehler refused to sign it right then. Goehler came up stairs into the office and said he would not sign that paper. I told him there was nothing in it I thought was wrong or valuable to him.

Q. 14. What date was that paper signed by you?

A. 14. I don't remember exactly the date, but it was signed a week or so before Goehler left.

Q. 15. Did you have any conversation with Mr. Goehler about his leaving the Mosler Safe & Lock Company? If you did, please state what was said by each of you.

A. 15. Yes, sir. When Mr. Goehler told me that he was going to leave, I wanted to know what his reason was for leaving us. He stated that he has two other places where he can get better wages. I asked him what places he had in view. He said one place was a little machine repairing place out on the railroad; he didn't say where, and the next place he said was he had a good show in Mosler, Bahmann & Co.'s. Then I asked him if that's all the reason he was going to leave; he said it was, and I went to see Moses Mosler, and we talked the matter over, and agreed to give him what he was satisfied with, and he (Goehler) promised me then that he had made everything satisfactory, and he was going to stay. He worked on again Monday, Tuesday and up to Wednesday morning about 8 o'clock; then Mr. Goehler came to me and told me that he has to come home immediately on account of a sick child. He did not come back that day any more, nor did he come back the next day. I sent up and inquired into the sickness. He was not home, but his wife told the party that she had no sick child, and he would not go to work for the Mosler Safe & Lock Company any more. After that I did not see Goehler any more until the other day here in this office.

Q. 17. When did you find out he had gone to work for Mosler, Bahmann & Co.?

A. 17. I found out he was going there before he left. He commenced to work the following Monday of that week.

Q. 18. While Mr. Goehler was working at the Mosler Safe & Lock Company, who carried the keys of the factory?

A. 18. He carried the key of the factory and the key of our office and test room up stairs.

Q. 19. Did he deliver up those keys before he left the Mosler Safe & Lock Company?

A. 19. He did not.

Q. 20. When were they delivered?

A. 20. I believe Mosler Safe & Lock Company sent some one down to Mosler Bahmann & Co. to get those keys. I could not tell exactly; it was two or three days after Goehler worked at Mosler, Bahmann & Co.'s.

Q. 21. While Mr. Goehler was working under you at the Mosler Safe & Lock Company, how did you and Goehler get along together—pleasantly, or otherwise?

A. 21. We got along very well, and when he told me he was going to leave he said he was very sorry, as we had got along so well together.

Q. 22. Who was the machinist that you ordered Goehler to take and assist him to make the bent angle bar that you have spoken about in your former testimony?

A. 22. Thorwarth was his name.

Q. 23. When did he leave the Mosler Safe & Lock Company?

A. 23. A week after Goehler left.

Q. 24. Did you have any conversation with Mr. Thorwarth after he left? If you did, please state when it was, and what it was about.

Objection. Objected to by Moore as calling for hearsay.

A. 24. Yes, sir, I had a conversation with him after he left. That was two or three days after he left. I found several things missing, and I sent for him. I wanted to know whether he took anything with him or not. He wanted to know what it was. I told him it was the steel templet for that corner, and the die for the punching machine nearly finished. He said no, he did not take it.

Q. 25. When had you seen the die and templet last before Mr. Thorwarth left, and are you sure that they were not in the shop of the Mosler Safe & Lock Company after he left?

Objection. Objected to by Moore as irrelevant and immaterial.

A. 25. I saw them the day before he left, and I never saw them after he left. I hunted for them for about three days after he left.

Q. 26. What, if you know, became of the sample corner which

was cut out and bent around, before the first angle bar frame was cut out and bent? I mean the one that you say came pretty near being the right thing.

A. 26. I was missing that sample corner before Goehler left, probably four or five days before he left.

Q. 27. Can you state more specifically the instructions that you gave Mr. Goehler when you directed him to cut out and bend the first bent corner or angle bar that he bent or assisted Thorwarth to bend at the Mosler Safe & Lock Company? State as near as you can what you said to him.

A. 27. I told Mr. Goehler to get an angle bar, have it cut out, and bent exactly to the templet which we had, so we could go to work and bend an exact corner, so I can get ready and get the tools in proper shape for it.

Q. 28. Who made the templet you speak about, or gave directions s to making it?

A. 28. I gave Mr. Goehler directions to have it made by the machinist, Thorwarth.

Q. 29. Please state whether or not Mr. Goehler understood your instructions, or seemed to understand them, at the time you instructed him to cut out and bend the angle bar.

A. 29. I don't hardly believe he did.

Q. 30. Why do you not believe he did?

A. 30. He never did anything to it except what he copied from me. He was watching me all the time while I was getting up the tools.

Q. 31. You have stated that you understood the invention here in controversy when Mr. Mosler explained it to you. Please state as near as you can how Mr. Mosler explained it to you, giving his exact language, if you can; if you can not, the substance of it as near as you can remember.

A. 31. Mr. Mosler showed me several times the curve or circle, round cornered safe, on paper, and he asked whether if I understand it. I told him I did, and on that basis I went to work.

Cross-examination by Mr. Moore.

X-Q. 32. You have testified that you made several round cornered safes prior to the 4th of November, 1881. Did those safes contain this invention in issue here?

A. 32. I should think they did.

X-Q. 33. Describe how the round corner was produced in these safes, and, if necessary, to your description, you may make a sketch or cut a piece of paper exhibiting their construction.

A. 33. The iron in the corner of the angle iron was cut out to such a shape as to form a round corner. This "Hemler Exhibit No 1" represents the round welded corner.

X-Q. 34. Do I understand you to mean the "Hemler Exhibit No. 1" represents an angle iron, such as was used in every round cornered safe made at the Mosler Safe & Lock Company's place, prior to November 4, 1881?

A. 34. No, sir.

X-Q. 35. Please state what safes it does represent.

A. 35. One of the first ones we made.

X-Q. 36. State when it was made.

A. It was made, this time, along September, 1881.

X-Q. 37. Were any other round cornered safes made subsequent to it, and prior to November 1, 1881? and, if the round corner was produced in a different way from this exhibit, please describe, particularly, their construction in this respect, making cuts or drawings, as seems to you, appropriate to illustrate your answer.

A. 37. They were all made up to this present time, the same shape, only the frames are not welded, simply punched out, bent round hot, with a small lap piece underneath, it is riveted together. "Hemler Exhibit No. 2," represents the first angle bent, so as to meet together without welding.

X-Q. 38. How many round cornered safes were made, prior to November, 1881, and having angle bars cut and bent, as represented in "Exhibit Hemler No. 2?"

A. 38. Quite a number of them? I can't exactly state how many.

X-Q. 39. When was the first such safe made?

A. 39. In the latter part of September.

X-Q. 40. Are you quite sure, now, that you do not mistake the date, and, to avoid possible confusion or uncertainty, I call your attention to the fact that you have testified that it was upon the 2nd or 3rd of November that you instructed Goehler how to make the round cornered safe?

A. 40. I did not instruct Goehler to make the round cornered safe. I instructed him simply to bend angles and get the exact cut. There were several safes made like "Hemler Exhibit No. 2," before the

instructions given to Goehler about making the exact cut for punch and die.

X-Q. 41. What difference do you understand to exist between the invention here in issue, and the method of cutting and bending, shown in "Hemler Exhibit No. 2?"

A 41. Very little difference.

X-Q. 42. If there be any difference, will you please take another piece of paper and cut it, and bend it so as to represent the method of cutting and bending an iron now in issue, said paper to be marked "Hemler Exhibit No. 3?"

A. 42. "Hemler Exhibit No. 3" differs from "Hemler Exhibit No. 2," in this, that "Hemler Exhibit No. 3" has shape edge point, while the No. 2 has a little more of a round edge cut.

X-Q. 43. What objection was there to angle irons cut and bent like "Hemler Exhibit No. 2?"

A. 43. There was not any, except the iron did not meet right closely, solidly together, and the reason was that I worked on the round shaped cut, as a mechanic, that the punch and die will stand better than a sharp pointed cut.

X-Q. 44. If No. 2 answered nearly as well, why did you change to No. 3.

A. 44. Well, I stated before, it left a little hole about as big as a pin head, at the curve.

X-Q. 45. Give me the result of your best recollection, as to the number of safes that were made with angle irons, like No. 2, prior to November, 1881.

A. 45. I can't tell exactly how many, because I kept no record. I expect there was three or four made; may be more.

X-Q. 46. Were there three or four, or more, all made at the same time; that is, were they being made together, or were they made successively, each finished before the next one was commenced?

A. 46. No, sir, they were not all made together; they were made at leisure time.

X-Q. 47. But you are quite sure, are you not, that they were all made between the 1st of September and the 1st of November, 1881?

A. 47. No. I do not think they were all completed by November, 1881. They were in process of making.

X-Q. 48. Did you have a punch and die for cutting out angle irons, similar to "Hemler Exhibit, No. 2?"

A. 48. No sir. We cut them out by hand.

X-Q. 49. Well, didn't you know when the first of them was cut out, that you must change the shape of the cut, in order to avoid that hole around the curve, which you say was a little bigger than a pin head.

A. 49. I knew that much. I had to take a little off one point and put it on the other.

X-Q. 50. Well, if you knew that much when you cut the first one out, then why didn't you make the requisite change before you cut another one out?

A. 50. Well, I did make a change.

X-Q. 51 Then was your second one of the three or four, or more, different from "Hemler Exhibit, No. 2?" If so, which safe of the three or four, or more, does "Hemler Exhibit No. 2" precisely represent?

A. 51. Pretty near the same, only I made the cut around the curve a little shorter.

X-Q. 52. Now, I understand you that the second safe of the three or four, or more, differed a little from "Hemler Exhibit, No. 2." Did the third safe that you made differ a little from No. 2?

A. 52. No difference in it, only a little less cut out than on the No. 2.

X-Q. 53. Did each of these three or four or more safes have such angle bar, as you have been describing in the rear as well as in the front?

A. 53. No, sir.

X-Q. 54. Well, did they have square corner in the rear and a round corner in the front? If not, state how the rear corner or edge in each of these safes was constructed?

A. 54. The rear corner was the same shape as the front. The difference was, they were not cut out by hand; the blacksmith cut enough out to form it into the shape the same as the front.

X-Q. 55. Was the back angle or corner of each of these safes formed upon an angle bar? If so, were the edges, where it was cut, welded? If not, please take a piece of paper, cut it and bend it, so as to illustrate the rear angle bar of those three or four or more safes, and let it be attached to your deposition, as "Hemler Exhibit, No. 4."

A. 55. The back angle or corner of each safe was formed upon

an angle bar, and was cut and bent in the same shape as the front angle bar, and cut out as shown in "Hemler Exhibit, No. 4."

X-Q. 56. You have stated that Moses Mosler gave you particular instructions, and that he cut several pieces in paper and cards, to show you how to cut and bend these angle bars. Will you please state which, if either of the Hemler Exhibit, Nos. 1, 2, 3 and 4, correctly represents the suggestion or instruction of Moses Mosler to you?

A. 56. I think No. 1, is one of them. The others I don't remember. No. 2 is pretty near in the shape of it, only I put on the little round part. We were both working together.

X-Q. 57. Is "Hemler Exhibit, No. 1," the nearest approach to Exhibit No. 3 that Moses Mosler suggested to you; and, if it is not, and if the exhibits referred to do not show precisely the form of the nearest approach made by Moses Mosler to "Hemler Exhibit, No. 3," you will please take a piece of paper, and cut one that will be a copy of that suggestion?

A. 57. Mr. Mosler cut out several of them, and I did not pay particular attention to it.

Adjourned till 9:30 A. M., January 3, 1883.

Wednesday, 9:30 A. M., met pursuant to adjournment. Present, witness, attorneys for both parties.

X-Q. 58. As I understand your testimony thus far, no round cornered safes were ever made within your knowledge at the Mosler Safe & Lock Company, except such as were made upon angle irons cut and bent as shown in the Hemler Exhibits Nos. 1, 2, 3 and 4. Am I right?

A. 58. That is right.

X-Q. 59. When was the first round cornered safe made at the Mosler Safe & Lock Company's place, of any construction?

A. 59. I think it was along in the month of September, 1881.

X-Q. 60. You say in substance in your answer to cross-examination 57 that Mr. Moses Mosler cut out several cards or pieces of paper to represent the invention, "and I did not pay particular attention to it;" and you say in answer 56 that he cut out one in the form of Hemler Exhibit, No. 1. What I want to know is, is the form shown in Hemler Exhibit No. 2 your own design or Moses Mosler's?

A. 60. The No. 2 is a part of Mr. Mosler's, and a part of mine.

X-Q. 61. Which part is Mr. Mosler's, and which part is yours?

A. 61. Mr. Mosler had about the same thing, only too small, not enough cut out.

X-Q. 62. How did you know it was too small?

A. 62. Because I tried it around the angle corner of the sample I had.

X-Q. 63. Then you did not try it in iron, did you?

A. 63. No, sir.

X-Q. 64. The first you tried in iron was like "Hemler Exhibit No. 2," was it not?

A. 64. I gave Goehler instructions to try it, and it was tried.

X-Q. 65. Who cut it out?

A. 65. The machinist, Thorwarth.

X-Q. 66. Who cut out the others of the three or four or more that you say were made before November of 1881?

A. 66. The same man.

X-Q. 67. Did you show Thorwarth how to cut them out? Or, if you had any conversation with reference to his cutting out such angle bars or any other angle bars prior to November, 1881, you will please state every such conversation with time and place.

A. 67. I did not show Thorwarth how to cut these out. All the conversation I had was with Mr. Goehler, as he was my assistant, and it was not my business to interfere or to give orders to working men that he had under his control.

X-Q. 68. Who made each of these three or four or more safes having angle bars similar to "Hemler Exhibit No. 2," and that were made before November, 1881? State, if you can, the name or names of the workmen, with present residences, who done every part of the work upon those safes.

A. 68. I can't exactly say who. The blacksmith that made the angle frames is either Stockler or Kech—one of those two. The other part was done up stairs by the box-maker. I think it was either Morman or Gerwe. All the other parts went through the regular process like other safes.

X-Q. 69. Who fitted the locks to these safes?

A. 69. That I can't tell.

X-Q. 70. State the names of all the men, if there be more than one, who fitted locks upon safes during the time that these safes were made.

A. 70. I can't state all the names, unless I look in the time-book.

X-Q. 71. Was there any blacksmithing necessary to be done upon those frames? And, if so, must Kech or Stockler necessarily have done that work?

A. 71. One of those two.

X-Q. 72. And the boxes must have been made for those safes either by Morman or Gerwe, as I understand you.

A. 72. I think one of those two made the boxes.

X-Q. 73. Is it possible that any one else could have made them? If it be, state all the names of persons who could by possibility have made those boxes.

A. 73. It is not impossible that any one else could have made those boxes, or could not make those boxes; but, as I said before, I think one of those two men made those boxes.

X-Q. 74. How many men were employed at the factory at that time whose business it was to fit on locks on to the safes?

A. 74. About seven or eight.

X-Q. 75. And any one of them, for aught you know, may have fitted on the locks upon all those three or four or more safes? Is that correct?

A. 75. No, sir, it might have been a different man to every door of those safes.

X-Q. 76. I want you to state the names of all the men who were then in the factory, with the places of their present employment and residence, if you know it, who could, by possibility, have fitted the locks on those safes, or any of them.

A. 76. I can't state all the names of the working men in the factory, especially at that time. Some new ones come in and some have left.

X-Q. 77. Is there a man, or class of men, whose business it is to fit the locks on the safes? And how many of them were there in the factory, if you know, at that time?

A. 77. As I stated before, there were seven or eight. I think there are three or four there yet who were there at that time.

X-Q. 78. State the names of these seven or eight, their present places of employment and residences, if you know.

A. 78. One is John Sponsle. There were two brothers of them at that time. One name is Reng. One name, I think, is Nicolai. The residence I don't know of any of them. That is all the men I have on that class of work who were there then from that time till now. I am not so sure but Nicolai came after.

X-Q. 79. Were there any men at that class of work, at that time, that you have not got now? If so, give their names.

A. 79. There were several names, but I can't remember them now.

X-Q. 80. Have you any books, either private books of your own, or books belonging to the corporation, that will show these names?

A. 80. I had the names in a small time-book. I did not hold those books. I only kept the names of the piece workers, not of the day workers. Those books belong to the Company that I had.

X-Q. 81. Did these men do anything except fit on locks? If so, what?

A. 81. That's all they done.

X-Q. 82. What are they called around the factory—lock-fitters, or what?

A. 82. Lock-setters.

X-Q. 83. Do the lock-setters work by the day or piece work?

A. 83. I don't remember whether they worked at that time by the day or piece work.

X-Q. 84. Was there any book kept by the Company that would show the names of all of these men, whether time-book or otherwise? If so, state what that book is, and who kept it.

A. 84. I guess the pay-roll book would show it. It ought to. I hadn't anything to do with that, though. It was kept in the office.

X-Q. 85. Describe the kind of work that the blacksmith did upon these angle bars?

A. 85. All he had to do, was to bend them to the right shape and exact size.

X-Q. 86. And, if these angle bars were bent in the factory, they were bent by either Stoeckler or Kech. Is that right?

A. 86. Yes, sir.

X-Q. 87. And if those safes were made in the factory, Morman or Gerwe made the boxes for them. Is that right?

A. 87. Yes, sir. One of those two, I think, made the boxes.

X-Q. 88. How many box-makers were there in the factory at that time?

A. 88. I can't state exactly how many, there were five or six, I think.

X-Q. 89. Well then, how do you know that Morman or Gerwe made those boxes?

A. 89. Because one of those two always made that kind of work,

when we had no price fixed on it for piece-work.

X-Q. 90. Please state the different classes of mechanics, through whose hands these safes must have passed, and state which of these could have seen the character of the angle bar, if any, in addition to blacksmiths, box-makers and lock-setters?

A. 90. Well, I guess they went through four or five different classes. First comes the blacksmith, then comes the door-maker, then comes the lock-setter, and then comes the box-makers, that's about all. The door-maker could have seen it. The lock-setter could not see it, he gets the door without the frame, and the doors all look alike.

X-Q. 91. Give the name or names of the door-makers who made the doors for the safes in question?

A. 91. I can't tell who made them doors.

X-Q. 92. How many door makers were employed by the Mosler Safe and Lock Company, at that time?

A. 92. About eight or nine.

X-Q. 93. Can you give their names, present places of employment, and residence?

A. 93. One of them is William Warning, one of them is Siegenthaler, and one is Meiske; the others are all new men, come in since. Those are the only three old ones that I have at the present time. I can't keep in my head the names of the men who left a year ago; not only this, some of those door-makers were changed into different work since that.

X-Q. 94. Will the time-book, or any other book, kept by the company, at that time, show the names of all the door-makers, then in the employ of the company?

A. 94. The time-book ought to show that.

X-Q. 95. Can you state after the noon recess, to-day, by examining the books during recess, the names of all the door-makers, at that time in the employ of the company?

A. 95. I don't believe I could.

X-Q. 96. Why? Could you not get access to the books, during the noon recess, to get this information?

A. 96. The reason why I can't, is because some of these men were changed into different classes of work, either just before or at that time, or after, I can't tell when.

X-Q. 97. Can you get a list of all door-makers, including as well, those you know to have been door-makers during that time, as also, any

others that may have been door-makers at that time, that is to say, a list that will include at least all the door-makers, at that time?

A. 97. I have got a list of the door-makers I have now, but I have not got a list of those I had then. It is impossible for me to state the names or list of door-makers I had then.

X-Q. 98. Does the time-book show the different occupations of the men?

A. 98. I don't know whether it does or not. I don't keep that.

X-Q. 99. If your memory was refreshed by an examination of the list of all the names in the employ of the company, at that time, could you not from that, select the door makers?

A. 99. If the time-book is kept in such a way, that I could see what different men worked upon, probably I could pick them out, or tell who they were at that time.

X-Q. 100. Couldn't you tell from an examination of the list in the time-book, who were door-makers at that time?

A. 100. I could not.

X-Q. 101. Do you know where those safes went to, and whether there are any of them in the factory yet?

A. 101. I can't tell where they went to. I don't believe there are any in the factory, of those safes.

X-Q. 102. Do you know whether they were made upon special orders or for stock?

A. 102. I do not.

X-Q. 103. Did you have a special order from either of the Messrs. Moslers, every time you started one of those three or four or more safes, or were they made under general instructions, to experiment upon a round cornered safe?

A. 103. Mr. Mosler gave me instructions first to make one safe, after that, he gave me instructions to make a few more, and so I did.

X-Q. 104. Well, after the making of this first safe, did you make the others of these three or four or more, altogether, or were they made, one after another, and each a little different from the other?

A. 104. They were not made all together. They were made, one after another, and the difference was very little, if there was any.

X-Q. 105. You say that after these three or four or more were made like "Hemler Exhibit No. 2." You gave Goehler instructions to cut out other angle bars, and experiment, to make a closer joint. What want to know is, is this the first time that you gave him instructions

to experiment, or does "Hemler Exhibit No. 2," represent the results of former experiments performed by Goehler, under your directions?

A. 105. I gave Mr. Goehler instructions to bend some of those angle corners and get some cut out, long before we made several of those safes like "Hemler Exhibit No. 2," but he never done anything about it, or seemed that he wanted to do anything about it.

X-Q. 106. When was your first instructions given to Goehler? was it before the first like "Hemler Exhibit No. 2" was made? If so, how long before, and what was the character of that instruction? If you used a drawing or a card or a piece of paper, cut to illustrate your meaning, please make a *fac-simile* or model of such cut or drawing.

A. 106. The first safe that was made was cut out by the black smith and welded. I think it was Kech who did it. I gave the instructions and the size. That instruction was given to Mr. Goehler shortly after Mr. Mosler returned from Europe, and before any safe like "Hemler Exhibit No. 2" was made. The instructions was to have a round cornered safe made and with the frame welded.

X-Q. 107. When was your next instruction given to Goehler, and what was your next such instruction?

A. 107. The next instructions were given to Goehler after that first welded round cornered safe was made. The instructions were to cut out a piece of angle iron and let the machinist cut it out so it will form into a round corner.

X-Q. 108. Nothing more specific than this?

A. 108. Nothing more just at that time.

X-Q. 109 Did you give any instructions to Kech or any person other than Goehler?

A. 109. I gave all my instructions to Goehler.

Adjourned till 1:30 P. M., January 3, 1883.

1:30 P. M., January 3, 1883, met pursuant to adjournment. Present, witness and attorneys for both sides.

X-Q. 110. When was the first safe made embodying angle bars cut and bent like "Hemler Exhibit No. 3?"

A. 110. About the first part of November, 1881. You used a word in a question put to me before dinner which I did not understand. There was a question whether there were any other round cornered safes made before the one like "Hemler Exhibit No. 2." There were

two or three of them made, I think, without an angle frame. We took a regular frame of other ordinary safes and cut the frame off to fit the circle of the sheet iron to form the round corner.

MICHAEL HEMLER.

EDWARD C. REEMELIN.

Edward C. Reemelin, being first duly sworn, deposes and says in answer to questions put to him by G. J. Murray, as follows.

Q. 1. State your name, age, residence and occupation.

A. 1. Name, Edward C. Reemelin; age, 36 years; residence, Cheviot, Ohio; occupation, lawyer, by profession.

Q. 2. You are the same Edward C. Reemelin whose name is signed to "Exhibit A" for identification and who acted as notary in the taking of depositions on behalf of Goehler in this cause?

A. 2. Yes, sir.

Q. 3. Do you recollect having a conversation with Mr. G. J. N. Goehler after the adjournment at noon on Saturday, December 16, in relation to the testimony he had given before you about this Mosler Exhibit A, to which his name is signed?

A. 3. No, sir.

Q. 4. Did he ask you any questions at that time or after his testimony was given, Saturday, December 16th, about what you thought of his testimony? Or did you have any conversation with him at all after adjournment?

A. 4. I don't know of any question or conversation.

Q. 5. Did any such conversation take place between yourself and Mr. Goehler, as you related to me in your office, when I called there Saturday afternoon, December 16, to get press copies of the testimony you had taken?

A. 5. Undoubtedly what I told you is so, but you must be mistaken in your assumptions.

Q. 6. What did you tell me at that time?

Objection. Objected to by Moore as hearsay and irrelevant.

A. 6. I can't recall it now.

Q. 7. Well, I will recall it for you. The conversation, as I recollect it, was as follows: "You stated to me that Mr. Goehler asked you

what you thought about his testimony, and that you said in substance: Mr. Goehler, your explanation about the reasons why you signed that paper won't do, or are too thin, or something like that. Your answers show that you are an intelligent, smart man, and you can't get out on the plea of ignorance as to what the contents of that paper was, and your explanation that you signed it as a sort of recommendation for Mr. Mosler, such as employers give employees when they are leaving, is rather peculiar, as employers are not in the habit of demanding from employees such recommendations. Now, if you had stated that the paper had been signed by you, in a fit of generosity, or to oblige Mr. Mosler, your explanation might have looked reasonable." Now, I ask you, Mr. Reemelin, if you recollect that conversation, and if I have not stated the substance of it correctly? And I will also ask if you do not recollect of my saying to you at that time that, if you had so stated to Mr. Goehler, that he would so shape his testimony when continuing his deposition?

Objection. Counsel for Goehler objects to the above speech, or oration, as an effort to supplement the testimony of Mosler by unsworn assertions, and further says that if Mosler's counsel has any valuable facts, he can be sworn and submit to cross-examination like other witnesses.

A. 7. No, sir, there was no such conversation at that time. But I see what I least expected of you, as a brother attorney, that you are now treating me exactly as you treated Mr. Goehler when he was on the witness stand; that is, you are putting your ideas or your conceptions of what you may have said or thought at the time, and are imputing to me a conversation which I did not have with Mr. Goehler, and which I did not say to you that I did have with him. I had conversations with you at various times. I had conversations with Mr. Moore, with Mr. Mosler, with Mr. Walter, and very little with Mr. Goehler, and I never presumed to advise him as to what he should testify to.

Q. 8. I did not assume when I asked you the question that you were an attorney in this case. I simply asked you for the facts as you stated them to me, and I will ask you now, again, if I did not tell you on the Monday following after the close of Mr. Goehler's testimony, when I called and paid you for the press copies you had made for me, that I would call you as a witness to testify to the conversation you reported to me that you had had with Mr. Goehler on the Saturday previous?

A. 8. I am not an attorney in the case, have no interest in it in any shape, manner or form, and the only feeling I have in the matter is one of great delicacy, and that is that it should be imputed to me that I, who was to take down the testimony of the witnesses impartially, as you and Mr. Mosler both afterward said I had done, should have attempted to dictate or tell a witness what he should testify to in regard to any questions at issue in the case. You did not tell me you were going to call me to testify as a witness as to that conversation which you impute to me. You did say you were going to call me as a witness, and you also did say that you would not call me as a witness, because I said it would not be right to call me on account of any opinions I might have expressed as to facts occurring during the examination on which I may have expressed myself favorably to the side you represent.

Q. 9. I did say; and say still, that you did fairly and impartially take the testimony, and disclaim all intention of imputing any wrong or unfairness to you in that matter; but as you commenced the conversation with me yourself, and I simply wanting facts, regardless of whose feelings may or may not be hurt thereby, have done simply what I consider it my duty as an attorney to get those facts. Now, will you please state what it was I said I would call you to testify to, as you seem to recollect the conversation?

A. 9. I will not argue with you, what you think may be your duty. I don't believe you can positively say who commenced any of the conversations you or I had together. I did not suppose at any time from your manner towards me, that you would attempt to use me for the purpose, you seem now to think, you succeeded in using me, for you did not tell me what you intended to call me for.

Q. 10. Did I not ask you to remember any matters that we had spoken about, and that you might be called upon to testify to?

A. 10. You said after the deposition had been taken, at the time you paid me for the letter press copy, of the deposition, "you remember what I said about Goehler's testimony, in regard to that letter;" you did not tell me that I would be called upon to testify in relation thereto, at that time.

Q. 11. What did you suppose I wanted you to testify to, when I told you you would be called?

A. 11. At the moment, I supposed you were going to ask me questions, covering opinions that I had expressed to you during the

trial, and which, as it appeared to me, according to the way you patent lawyers examine witnesses, might be asked of me.

Q. 12. Then I didn't tell you what I would call you to testify to, or inform you in any way, in case I did call you, what fact it was I wanted you to remember.

A. 12. I think not.

Q. 13. Well, you have stated that you did have conversations with Mr. Goehler. Did you have any conversation with him after adjournment, on Saturday, December 16th, and especially about that paper he had been testifying about?

Objection. Objected to by Moore, as incompetent.

A. 13. I am certain we had no conversation about that paper, and I don't recollect any particular conversation we did have; there may have been some remark about the deposition or something. I think he asked me what time I would send the deposition up to Mr. Moore's office, as it had been agreed that as Mr. Murray was to have a full letter-press copy that afternoon, I was to let Mr. Moore have the deposition proper.

Q. 14. Did you send it up or bring it up, and is that all the conversation you recollect having had with Mr. Goehler, and did that conversation take place in the office where he was examined, or in your office?

A. 14. I sent it up; and the conversation, if there was any, took place immediately after adjournment, while I was packing up my papers in Mr. Moore's office.

Q. 15. Have you had any conversation with anybody about what you were called to testify about here, since you were served with subpœna yesterday?

A. 15. No.

Q. 16. You have stated that my version of the conversation that took place at your office, on Saturday, December 16, does not accord with your recollection. Can you give us your recollection as to what that conversation was?

A. 16. I couldn't now give you that particular conversation, and I think that's where you have made your mistake, partly, in putting into that conversation things we may have talked about at other times.

Q. 17. Do you recollect, after the close of the depositions, of my saying to you (callling your attention to the conversation we had had on Saturday)? "Did I not tell you what Mr. Goehler would say on

Monday, as to why he signed that paper," "Mosler Exhibit A?" And asking you if you noticed at the time his said answer was given?

A. 17. I think you said something like that, and I think I answered you, that I did not notice anything at the time.

Q. 18. Do you recollect that then, I called your attention to the conversation had on the Saturday previous, and told you that I might call you as a witness?

A. 18. No, sir.

Q. 19. Do you reeollect telling me it would not do me any good to call you as a witness; that you wouldn't give it away, or words to that effect?

A. 19. I told you at the time you said you would call me as a witness, not to do so, as I couldn't do you any good, that I knew nothing of the facts, and that my opinions, or casual remarks, were not testimony, and if the suggestions were of any value, he would have to get testimony bearing on them some other place. You agreed with me, and said you would not call me. I never said that I "wouldn't give it away, or word to that effect." EDWARD C. REEMELIN.

MICHAEL HEMLER.

X-Q. 111. In the statement appended to your last answer, you say there were two or three other round cornered safes made prior to those having angle irons, like "Hemler Exhibit No. 2." Examine "Goehler Exhibits Models Mosler Round Cornered Safes, Nos. 1 and 2." State whether these, or either, and which of them, correctly represents those round cornered safes, and state where they were made.

A. 111. I say there were two or three safes made withont angle frames; had small angle irons riveted on to the inside of the sheet iron, No. 8 iron. "No. 2 Goehler Exhibit" represents them; the other "No. 1 Goehler Exhibit," I don't know anything about.

X-Q. 112. Were these two or three made prior or subsequent to the safe which you say was made like "Hemler Exhibit No. 1," with the edges of the angle iron welded to form a joint?

A. 112. These were made afterwards.

X-Q. 113. Were those two or three safes like "Exhibit Model Mosler Safe, Round Corner No. 2," made before the safes like "Hemler Exhibit No. 2?"

A. 113. They were made before.

X-Q. 114. Were all of those like "Mosler Round Cornered Safe, No. 2" made before any of those like "Hemler No. 2" were made?

A. 114. Yes, sir.

X-Q. 115. Did you instruct Goehler how to make those safes, like the "Exhibit Mosler Safe, Round Cornered, No 2?"

A. 115. I did.

X-Q. 116. Then there were, if I understand you correctly, of round cornered safes made at the factory between June and November, 1881: First, a safe constructed with angle irons like "Hemler Model No. 1," having welded corner; second, two or three safes like "Exhibit Model Mosler Round Corner Safe No. 2;" third, three or four, or more, like "Hemler Exhibit No. 2." Is that right?

A. 116. Yes, sir.

X-Q. 117. You say you gave specific instructions to Goehler exactly how to make each of these round cornered safes. Did any person, if so, who, hear you give these instructions, or any of them?

A. 117. I gave Goehler the instructions to carry them out. No one heard me give the instructions. They were given up in our private office and tool-room.

X-Q. 118. State the names, if there be any, of all the men in the factory who knew of any of the safes with angle irons like "Hemler Exhibit No. 2" having been made.

A. 118. I stated that this morning.

X-Q. 119. If you know of any workman who knows of the above facts, give his name.

A. 119. I named all I knew that worked on them this morning; beyond that I can not tell.

X-Q. 120. When did you first know that you were going to testify in this case?

A. 120. Not over two or three weeks ago; I don't think it is that long.

X-Q. 121. During those two or three weeks have you spoken to any of the workmen about any of the facts about which you have testified, and especially with reference to the safes which you say were made like "Hemler Exhibit No. 2?" If you have, please give the names of the workmen with whom you have so spoken.

A. 121. I didn't speak to any one. There were two or three came and spoke to me about it, when they were subpœnaed for witnesses for Goehler; that's all.

X-Q. 122. Prior to making the safes like "Hemler Exhibit No. 2," were there any pieces of angle iron bent like the "Exhibit" to test whether it would be practicable?

A. 122. There were models made, cut out of pasteboard, like my "Exhibit No. 2." I handed that to Goehler one morning in the first part of November, that same morning when I was called away on some other business. I told him to get a piece of angle iron and have it cut out and bent, and, if it don't come exactly right, to throw it away and get another one cut out, and work on it until we get it exact, and then so we can make the templets for our punches and dies.

X-Q. 123. Was that before or after the safes were made like "Hemler Exhibit No. 2?"

A. 123. It was after.

X-Q. 124. Well, if Goehler had made several safes like it, why did you think it necessary to show him again by means of a cut card how it was done?

A. 124. Goehler did not do a thing about the other safes before. He did not bend anything himself until that morning.

X-Q. 125. I have understood you heretofore to state that the three or four or more safes like "Hemler Exhibit No. 2" had been bent by Goehler, or by Goehler and Thorwarth, under your instructions. Is this correct, or not?

A. 125. I never saw Goehler take any interest, or show any pride about it, except to do what I told him until that morning. I expect the foreman to carry out my orders, whatever I tell him to do.

X-Q. 126. The question is repeated, and officer will please re-read it to the witness.

A. 126. I don't believe they were bent by Goehler. The blacksmith bent them.

X-Q. 127. Who did you instruct how to bend them?

A. 127. I instructed Goehler to have them cut out and bent. Don't know which blacksmith he had to do it.

X-Q. 128. Well, then, if Goehler knew how they were bent, why did you think it necessary upon that morning in the beginning of November to hand him a card cut out of pasteboard, showing how they were bent, as stated by you in your 122nd answer?

A. 128. We were experimenting then yet. We had not exactly the shape of the cut yet.

X-Q. 129. You have not answered my question. You have plen-

tifully stated that there were three or four or more round cornered safes made prior to November, 1881, having angle irons like "Hemler Exhibit No. 2," and you have stated these were made by the workmen under Goehler's direction, and according to instructions given by you to Goehler, and you have further stated in answer 122nd that subsequent to the manufacture of those safes, and about the beginning of November, you handed to Goehler a piece of pasteboard cut out like "Hemler Exhibit No. 2," to show him how to experiment. The question is, if Goehler had been for some time familiar, not only with the design of "Hemler Exhibit No. 2," but with safes actually constructed according to it, why did you again show him that pasteboard cut in that way?

Objection. Question objected to by Murray as misleading. Argumentative.

A. 129. Those three or four safes, as I stated before, were cut out by hand, and it was not quite the exact shape to fill up the corner round the curve; therefore, I cut another one out of pasteboard, and told Mr. Goehler to bend it, then he can see exactly where to take off or where to put on a little more iron, so he gets the shape of the exact cut.

X-Q. 130. Well, was this other one that you cut out, referred to in your last answer, like "Hemler Exhibit No. 2," or different?

A. 130. It was pretty near the same thing; it might have been a little closer around the curve.

X-Q. 131. Did you tell Goehler then to cut the angle iron precisely as the card was cut, or did you give him the card to show him in what direction to experiment?

A. 131. I gave him the pasteboard that I had cut out. I told him to have it cut out. I expect he done it. At that moment when I done it I was called away.

X-Q. 132. Question repeated, and the officer is asked to explain the point of the question to the witness.

Objection. Question objected to by Murray as being repeatedly answered.

A. 132. I gave him that pasteboard to get one cut out like it out of angle iron.

X-Q. 133. Then you did not require him to experiment or to use

discretion or judgment, but only required him to obey instructions to the line and to the letter. Is that right?

Objection. Same objection by Murray.

A. 133. No, that is not right.

X-Q. 134. Then, what is right? Did you give him that pasteboard, to have an iron cut out exactly like it, or did you wish him to get an iron cut and bent properly, whether it represented the pasteboard or not?

Objection. Same objection by Murray, and for the further reason that it calls for what the witness wanted, instead of what he actually told Goehler to do.

A. 134. I gave him that pasteboard cut out, as I stated before, to have it cut out of the angle iron as near as it can be done, then have it bent into proper shape, and, if it don't close up that small trifle hole, that I had in my cut No. 2, then to take another piece of angle iron, have it cut out and bent into proper shape. In the means of doing this, you can find out where you have to take a little off or where you have to put a little on.

X-Q. 135. Then, if I understand you correctly, your instructions were to cut the first angle iron exactly like the pasteboard that you handed to him, and if that didn't work, he was to cut another, or others differing as to the amount and character of the piece cut out, as his judgment dictated.

A. 135. That is correct.

X-Q. 136. I will ask you again, in as much as Goehler had already had experience with the cutting out and bending of angle irons, like "Hemler Exhibit, No. 2," for three or four, or more safes, did you think that Goehler was such an ass that it was necessary to cut another piece of pasteboard for him, in order to show him how to close that hole, and yet not such an ass but what, if the first angle iron that he might cut out according to your then instructions, did not happen to be satisfactory, but what he would still have sufficient good sense, to vary from the pasteboard given him, and cut an angle iron that would answer the purpose? Is that the reason that you gave him the pasteboard in question?

Objection. Question objected to by Murray, because it is argu-

mentative, and for the further reason that it is misleading, and the facts called for by the questions, have been repeatedly stated by the witness. It is objected to as misleading, as it assumes what is not a fact; that the card was given to him without directions as to what he should do.

A. 136. I think Mr. Goehler is a man of good common sense, but, at the same time, I haven't seen anything better than my pasteboard, out of Goehler, up to the present time.

X-Q. 137. Do you think that to make a round corner for a safe, by cutting and bending a piece of angle iron, as indicated in "Hemler Exhibit, No. 3," would require any invention, or do you think it is a thing that any good mechanic, familiar with safe making, would do, if asked, to make a good, practical, cheap, round cornered safe?

A. 137. No, it would not require much of a mechanic after he gets the right idea of the shape. It didn't bother me very much.

Adjourned till 9:30, Thursday morning, January 4, 1883.

Met pursuant to adjournment, at 9:30, A. M., January 4, 1883. Present, same parties.

X-Q. 138. What I want to know, is, whether it would require any invention, or anything more than mechanical skill, from an ordinary good mechanic, to make the round cornered safe in question, if he was simply told to make a round cornered safe, that would be cheap and good, and no other idea was given to him as to how it should be done?

A. 138. It is not much of a job for any good mechanic, after the necessary tools and machinery are gotten up, for that class of work.

X-Q. 139. And it would not require any invention, would it, to devise the right class of tools?

A. 139. The tools has bothered my head more than punching out that corner; in fact, I knew at that time that that corner could be made, and can be made, and I have made it ten or eleven years before that; that I was, in my knowledge, the first man that ever made round cornered messenger safes for express companies.

X-Q, 140. Those safes that you made ten or eleven years ago, did they have angle irons cut out after the manner of any of the "Hemler Exhibits 1, 2, 3, or 4?" If so, which of them were those safes like?

A. 140. They had angle irons cut out similar to No. 1.

X-Q. 141. And "Hemler Exhibit No. 1" involves the same inven-

tion as "Hemler Exhibit 2 or 3," in your opinion. Is that right or not?

A. 141. No, sir, it is not quite the same.

X-Q. 142. When a safe-maker is familiar with the mode of making safes such as indicated in "Hemler Exhibit No. 1," with welded corners, would it, in your judgment, require any invention to pass from that to "Hemler Exhibit No 3"?

Objection. Question objected to by Murray as incompetent and irrelevant to the issues in this case.

A. 142. The "Hemler Exhibit No. 3" is not made to make a round welded angle corner. It is simply made to draw together without welding; therefore it could not be used for that purpose.

X-Q. 143. Question repeated, and the officer is requested to please read and explain to witness.

A. 143. Well, a little. Very little, as I stated before. The principal part is in the tools and machinery.

X-Q. 144. In your answer 139, when you state that ten or eleven years before you had made safes with angle bars cut like "Hemler Exhibit No. 1," with welded corners, you also state that, "I knew at that time that that corner could be made and can be made," referring, as I understand you, to a corner made like "Hemler Exhibit No. 3," if that be so, surely it required no invention to make safes like "Hemler Exhibit No. 3," while I understand you to say in your last answer that it would require a little invention to pass from "Hemler Exhibit No. 1" to "Hemler Exhibit No. 3." Please explain this, and, if there be anything about it that is not clear, please point it out.

Objection. Objected to by Murray for the reasons above stated, and because the question is misleading, and has been fully answered in the previous answers of the witness, and as mis-stating the witness' testimony.

A. 144. It requires a little invention on every width of an angle bar.

X-Q. 145. But it would require no more invention for such mechanic familiar with safes like "Hemler Exhibit No. 1" to make his first safe like "Hemler Exhibit No. 3," than it would to make a second safe with another, and different width of angle bar, would it?

Objection. Same objection by Murray.

A. 145. It would make but very little to a mechanic.

X-Q. 146. Do you recollect a conversation that took place in the shop on the day after Goehler bent first angle bars like "Hemler Exhibit No. 4," in the early part of November 1881, between yourself, Moses Mosler and Mr. Goehler? If you do, I want you to state precisely that conversation if you recollect it.

A. 146. I don't remember anything about a conversation at that time.

X-Q. 147. The conversation referred to was between yourself and Moses Mosler, Goehler being present, however, as a silent party, and was in the blacksmith shop. The irons bent by Goehler lying before you, and being the subject of the conversation, which occurred upon the fifth of November, and the day after you moved the safe to which you have referred. Do you now recollect that occasion and the conversation that occurred?

A. 147. I don't remember that Mr. Goehler bent an angle while I and Mr. Mosler were present.

X-Q. 148. The question does not ask you to recollect an angle bent by Goehler, nor does it recite that an angle bar was bent by Goehler in the presence of yourself and Moses Mosler. It simply asks you whether you recollect a conversation in the blacksmith's shop, on the day after you moved that safe, between yourself and Moses Mosler, and at which Goehler was present, and a bent angle bar, or angle bars, substantially like "Hemler Exhibit No. 3," were lying before you, and formed the subject of the conversation. Do you now recollect the occasion and conversation?

A. 148. I don't know of any conversation. There were several angle bars bent at that time, and probably the bar No. 3 was bent at that time, or right shortly after that time; I can't remember. I know it was bent a day or a day or two after I moved that safe.

X-Q. 149. I will repeat a portion of the conversation that then took place: Moses Mosler asked you, referring to the angle bar lying before you, who found that out? To which you answered, "Its nobody's find out; it has to be so;" and to which Mr. Mosler replied, that is not what I want to know; I want to know who found that out. Do you recollect that conversation, or substantially, that conversation at or about that time?

A. 149. I do not; and I don't believe that there was ever any such a conversation, as near as I can remember.

X-Q. 150. Will you swear positively that that conversation did not take place?

Objection. Murray objects because the witness has already stated he does not recollect such conversation.

Objection. Counsel for Goehler desires to say that he would prefer that such remarks, if necessary to be made for any purpose, should be made to the witness in private, rather than that the record should be incumbered with them.

A. 150. I don't remember any conversation that Mr. Mosler and I had with Mr. Goehler in the blacksmith shop.

X-Q. 151. In your answer 68 you state the names of two blacksmiths who may have been familiar with the "three or four or more safes" which you say were made like "Hemler Exhibit No. 2," and whose angles were bent without welding, before November, 1881; and in the same answer you also state the names of two box-makers who also may have been familiar with those safes; and in subsequent answers you state the names of certain other mechanics who may have been familiar with those safes. What I want to know, now, is this: Can you name any man that you can now say that you talked with about those particular safes, prior to November, 1881, or any man of whom you can now say that he knew of those safes, or any of them, either by having worked upon any part of them, or who had his knowledge of them from any source whatever?

Objection. Question objected to by Murray, for the reason that the matter now inquired about, had been and exhaustively gone into in a former stage of this cross-examination.

A. 151. I didn't talk to any man particularly, about those safes, except Mr. Moses Mosler. He drew my attention to it; I think it was in the filling or paint shop, on account of that little opening it had left in the corner. That's all I can remember about it.

X-Q. 152. The last question also asks you in addition to the portion that you answered, whether you now know of any living man, that you can say you knew at that time of the manufacture of those three or four, or more safes, however his knowledge was derived. If you can, name him.

Objection. Same objection by Murray.

A. 152. I named them yesterday.

X-Q. 153. You say in answer 151, that Moses Mosler drew your attention in the filling or paint shop, to a safe that had that little opening in the corner. Was not that safe constructed in accordance with the "Mosler Model's of the Round Cornered Safes, Nos. 1 or 2?" and state, as nearly as you can, where the conversation took place.

A. 153. I think there was one of those round cornered safes, "Hemler Exhibit, No. 2," as near as I can remember; it was in the latter part of October, 1881.

X-Q. 154. Were the safes like the Mosler model of round cornered safes filled from the back or the bottom?

A. 154. I can't positively say whether they are or not.

X-Q. 155. Were the safes like "Hemler Exhibit No. 2" filled from the back or the bottom?

A. 155. I can't say that whether they were or not; I can't remember.

X-Q. 156. Are the safes that are now made by the Mosler Safe & Lock Company, like "Hemler Exhibit No. 3," filled from the back or the bottom?

Objection. The question is objected to by Murray, as immaterial and irrelevant, to any issue in this case.

A. 156. Some of them are filled from the top and some are filled from the bottom.

X-Q. 157. Will you please state why Mr. Mosler asked you to sign "Mosler Exhibit A?" The paper recites that it was reported that you and Goehler laid claim to the invention. Had you laid claim to that invention?

A. 157. Mr. Mosler asked whether if I would sign that paper. I looked over it particularly, and I signed it, because he was the first man spoke to me about making this round cornered safe. I don't believe I would. I did not lay claim to that invention.

X-Q. 158. Had Moses Mosler talked with you about that paper before you and Goehler were called in to sign it?

A. 158. I don't believe he did.

X-Q. 159. If you had never intimated that it was your invention, as I understand you never did, have you any idea why Moses Mosler should ask you to disclaim the invention by signing the paper?

A. 159. In my estimation I didn't think that it was an invention worth while to talk about or to go to a patent office with it, as I have

made during the last thirty-five years several more valuable inventions, and they were rejected to me.

X-Q. 160. When you first instructed Goehler to cut and bend an angle iron, had you a templet, showing the form made, or was that made afterwards, and state when the first templet was made?

A. 160. When I first instructed Goehler to bend an angle corner, I had one cut out of pasteboard, as I have stated before, and I think the steel templet was made after the cut No. 3 was finished. I think it was the first part of November, 1881.

X-Q. 161. I want you to tell me how you rate Mr. Goehler as a mechanic? Is he a bad one, an indifferent one, or how good is he?

A. 161. That's none of my business what kind of a mechanic Mr. Goehler is.

X-Q. 162. Well, won't you tell us whether in your opinion he is a very desirable mechanic in a safe shop or not?

Objection. Objected to by Murray as immaterial and irrelevant.

A. 162. He has some little experience about safe making, probably more than I have; that I don't know.

Re-Cross-Examined by Mr. Murray.

R-X-Q. 163. You have spoken frequently in your cross-examination about angle bars cut out and bent like the "Hemler Exhibit Nos. 1 and 2." If you have made any models in iron representing these angle corners, will you please make them a part of your deposition, and explain them?

A. 163. This one represents corner bent like "Hemler Exhibit No. 1," and this bent corner represents a corner made after the plan of "Hemler Exhibit No. 2," and the straight one represents "Hemler Exhibit No. 2" cut out, and before it is bent. The first one of these is offered in evidence, and the notary is requested to mark the same "Hemler Exhibit Model No. 1." The second is offered in evidence, and the notary is requested to mark the same "Hemler Exhibit Model Round Corner No. 2;" and the third one is offered in evidence as "Hemler Exhibit Model Unbent Angle Bar No. 2."

Re-Cross-Examination by Mr. Moore.

R-X-Q. 164. State when the models just offered in evidence were made, and by whom?

A. 164. Those were made about three weeks ago; they were through my direction by the machinists and the blacksmiths.

R-X-Q. 165. Did Moses Mosler tell you to have them made, or was the making of them an idea of your own?

A. 165. It was an idea of my own.

MICHAEL HEMLER.

Adjourned till 2 P. M., Thursday, January 4, 1883.

Met pursuant to adjournment at 2 P. M., January 4, 1883.

MOSES MOSLER.

Moses Mosler, being first duly sworn, deposes and says in answer to questions put to him by G. J. Murray, as follows:

Q. 1. State your name, age, residence and occupation.

A. 1. Moses Mosler, age 32 years, residence, Cincinnati, Ohio; occupation, safe manufacturer; president Mosler Safe & Lock Company, and president of The Mosler Manufacturing Company.

Q. 2. Are you the Moses Mosler that is one of the parties to this interference?

A. 2. I am.

Q. 3. Are you acquainted with George J. H. Goehler, the other party to this interference? And, if you are, state how long you have known him.

A. 3. I am. I have known him for about two or three years.

Q. 4. You will please state, Mr. Mosler, when you first conceived the invention in round cornered safes formed upon frames made of angle bars, one side of which is cut out, and the other side bent around to make a round corner, close joint, which is the subject of this interference? State when you first explained or described the invention to others, if ever, and give a general history of your invention of its conception, until its reduction to practice.

A. 4. I first conceived the invention in the summer or fall of 1880, and I spoke to Mr. Hemler about it about that time; at any rate, previous to my departure to Europe, which was in January, 1881. At that time I conveyed my idea to Mr. Hemler, and explained it thoroughly to him. Mr. Hemler did not seem to think much of it, however; seemed to know just what I wanted, and said he could do it. As much as I can recol-

lect, he urged me not to have it commenced at once, in as much as we were very busy at that time; besides, he had only been with us a few months, and had a number of changes to make throughout the factory. After my return from Europe, about the middle of June, 1881, I again instructed Mr. Hemler how to proceed in the matter, for, as there was nothing done in my absence, it led me to believe that he did not seem to fully understand what I wanted, or was rather negligent in the matter. He promised me then to go to work at it at once, and follow out my directions. So, about the middle of September, I went to see my patent attorney, Mr. Murray, to make an application for a patent for a round cornered safe, with bent angle bars, bent cold, forming the circle I had given Mr. Hemler to work by. And had it not been for Mr. Murray's advice at that time, the application for a patent would have gone forward then, instead of December. The reason he gave me for postponing the matter was, that he thought it would be most advisable to wait until we had constructed some safes, as we might afterwards find that the machinery to be used in the construction of these safes would also be patentable, and could be embodied in the same application. I might here say that I also explained the idea to Julius and Max Mosler, also stockholders of the Mosler Safe & Lock Company, who, with me, consented to adopt the construction of the safe above stated. The first time it was made into a safe, I think, was in the latter part of October, 1881. That is about as near as I can come to it.

Q. 5. How did the invention, which you say you explained to Mr. Hemler before your departure to Europe, and, after your return therefrom, compare with or differ from the invention shown, described and claimed in your application here in interference, and embodied in your round cornered safes now and for the past year manufactured by the Mosler Safe & Lock Company?

A. 5. The only difference that I know of is a slight change in the upper cut to permit it to come close together, and this was done at my instigation, in informing Mr. Hemler that the bend must come close together.

Q. 6. When and where did you so inform Mr. Hemler?

A. 6. I can not tell the exact date, except to approximate it to have been just before my departure for Rochester, New York, or immediately after my return, on the 1st or 2nd of November, 1881, as the safe was not painted. I think it must have been in the filling room or paint room.

Q. 7. What safe do you refer to in your last answer, and, if there are any models before you, you may refer to them, to explain your answer.

A. 7. I think it was the first safe made with cold bent angle bars, having round corners.

Q. 8. Please state what you informed Mr. Hemler about that safe, or what change you suggested, in relation to it?

A. 8. The change that I suggested, was to have the corner closed tight—that is, the upper part, so that there would be no opening showing. The opening in that safe was about as thick as a silver quarter, or half dollar.

Q. 9. Do you mean that the change was that more metal should be left, or less cut away, so that that opening would be closed, when the corner was bent?

Objection. Objected to by Moore as leading.

A. 9. I simply meant that he should change the cut in such a way, as to have it closed tight, either by cutting away more metal, or less than he had previously, in order to make this change.

Q. 10. Can you state about the date that the angle bar in that safe was cut out and bent?

A. 10. Hardly.

Q. 11. What date was it, as near as you can recollect, when you gave the instructions to Mr. Hemler, with reference to that safe?

A. 11. As I stated before, it was either before I left for Rochester, or immediately on my return.

Q. 12. Well, can you state whether the angle bar in that safe was cut out and bent before your departure for Rochester, or after you returned from Rochester?

A. 12. It necessarily must have been cut out some time before my return from Rochester.

Q. 13. Why must it necessarily have been cut out before your return from Rochester?

A. 13. For the safe was either constructed before I left, or during my absence.

Q. 14. How do you know that it was constructed before you left, or during your absence?

A. 14. Because I had instructed Mr. Hemler, some time previous

to my departure, to hurry the construction of the safe as much as possibe, as we were negotiating with H. H. Warner, Rochester, New York, for the sale of our safes, and had partly concluded arrangements with him, and having the construction of this class of safes in view.

Q. 15. How long was it, if you can state, after your return from Rochester, or what time, with relation to your trip to Rochester, that you noticed that safe with the opening in the corner, and called Mr. Hemler's attention to it?

A. 15. It was either previous to my departure, or a couple of days after my return.

Q. 16. What was next done with relation to the invention, after the time you called Mr. Hemler's attention to that safe with the opening in the corner, and you will please state when you departed for, and when you returned from Rochester?

A. 16. I instructed Mr. Hemler to have it rectified, as I directed him. I departed, I think, the 25th or 26th of October, 1881, for Rochester, and returned on the 1st or 2nd of November, 1881.

Q. 17. Well, was the defect rectified, and when?

A. 17. The defect was rectified shortly after my return from Rochester.

Q. 18. By whom, under what circumstances, and, I wish you to state fully, all that took place about that time, until the completion and perfection of the invention, without waiting for further questions?

A. 18. Mr. Hemler promised that he would at once go to work to make the necessary change, and at the same time promised to take immediate steps to make the necessary tools and machinery for the punching and bending of these angle frames and outer sheets, so as to push the construction of these safes, as I had made a contract with H. H. Warner. Mr. Goehler came in one morning, I believe, and showed me a pasteboard angle bent,, which closed the corners more closely. I had no chat with him then whatever, as I was quite busy, and took it for granted that he had followed out my instruction previously given to Mr. Hemler.

Q. 19. State what was said by Mr. Goehler and yourself at that time; state also whether it was before or after you had called Mr. Hemler's attention to the safe having a slight opening in the corner that Mr. Goehler showed you pasteboard with a cut closed more closely when bent around?

A. 19. I don't think—at least I don't remember any particular conversation I had with Mr. Goehler at that time. I think when he

first came in he asked for Mr. Hemler, and after he showed me what he had, I took it for granted that my instructions had been followed out through Mr. Hemler, as this was after I had instructed Mr. Hemler to make the change.

Q. 20. Did you give Mr. Goehler any directions at that time, or any orders? If so, what orders did you give him?

A. 20. If I did, I can not recollect them just now, as so much has transpired and occupied my close attention since then.

Q. 21. State when you first saw the angle bar for safes bent around with a close fitting joint, without any opening in the corner, or one that had been cut out and bent similar to the pasteboard that was shown you by Mr. Goehler.

A. 21. I think it was the same day that Mr. Goehler showed me that pasteboard.

Q. 22. Where was it? Who was present? What, if anything, was said by yourself or any one present?

A. 22. I believe Mr. Goehler and the machinist were present. I can not exactly relate any conversation that took place. It was rather late in the evening, and I was anxious to get home. It was in the iron shop, on the lower floor.

Q. 23. Please state specifically, if you can, just what instructions you gave Mr. Hemler when you ordered him to construct a safe having the round cornered bent angle frame, such as are now made by the Mosler Safe & Lock Company, and shown and described in your application for a patent which is here in interference.

A. 23. I first gave him the exact circle of the round corner that I then desired, and on which circle we are still constructing safes. When I first gave him the size of the circle, I told him that in order to form that circle that it would be necessary to cut sufficient away from the upper web to permit the angle, when bending cold, to form the shape that I desired; at the same time to cut sufficient away below, so that, when the angle is bent, so that the cut out parts will permit the remaining parts of the angle iron to meet, instead of overlapping, as is necessary in making round corner angle frames that are welded together in the corner, as this was the main obstacle that I desired to overcome, in order to construct safes on a cheaper plan, and much stronger in every respect than we had constructed them before; for, by doing this, we would save great outlay by being able to dispense with the aid of blacksmiths, who were very scarce, and commanded very high wages. As

Mr. Hemler assured me that he could and would carry out my ideas in the matter, I did not think any further special instructions to Mr. Hemler would be necessary, and, had I thought that Mr. Hemler was not fully competent to carry out my ideas, I would have myself went to work without giving him any instructions, whatever—went and made what I desired myself. I might here say that the contract we entered into with H. H. Warner, Rochester, New York, was made at greatly reduced prices, as I had consulted Mr. Hemler, and he assured me after due consideration that this safe could be made at a much less cost than the one we were then making, which was similar to the square cornered safes of other manufacturers. Another point that I took into consideration, was, that the cement would eat through all the joints in square cornered safes, as they were made in pieces and not in one sheet, as I had instructed Mr. Hemler to make the safes in connection with this bent cold angle bar.

Q. 24. What is the date of the contract with H. H. Warner referred to in your former answer?

A. 24. I believe October 29, 1880. The contract was dated that date, but negotiations were pending with Mr. Warner four to five weeks previously.

Q. 26. Please state when your concern, the Mosler Safe & Lock Company, first entered upon the manufacture of these round cornered safes containing the invention here in controversy, and how extensively the concern has manufactured and sold them from the time they commenced manufacturing them up to the present time.

Objection. The latter inquiry objected to by Moore as irrelevant.

A. 26. The first one made, I believe, was the latter part of October, 1881; and after machinery and tools had been prepared, some time in November, 1881, we have been manufacturing these safes at the rate of 500 per month, or more.

Q. 27. When did you first hear that Mr. Goehler, or any one else besides yourself, asserted any claim to the invention or any part of the inventions, here in controversy?

A. 27. It was either the same day or the day following, that Mr. Goehler had notified me that he contemplated leaving our employ, and of his intention of accepting a position with Mosler, Bahmann & Co. While laying no stress upon Mr. Goehler's intention of leaving our

employ, I nevertheless did not think it right on the part of Mosler, Bahmann & Co. to attempt to hire away from us, especially a foreman. So I made up my mind to speak to Mr. Frederick Naeher, a stockholder and director of Mosler, Bahmann & Co., about it, and ascertain the facts. The reason I chose Mr. Naeher, was because he is interested with William L. Perkin & Co., whose place is next to our office on Elm street. The opportunity presented itself the same day, or day following, Mr. Goehler notified me of his intention of leaving. Mr. Naeher was crossing the street in front of our office, to go to his place of business, when I hailed him, and told him of this action on the part of his firm—this safe company, that I thought they were treating us in an underhand way. Mr. Naeher then told me that Mr. Goehler had made application himself, and had shown them a number of drawings, among which was this angle, and had claimed to be the inventor of it. Upon this information, and Mr. Goehler saying to me when I asked him what they wanted him down there for, told me they wanted him to make improvements; that he was to have full sway, and introduce whatever he wanted to. I then made up my mind, that if Mr. Goehler was going to leave us, making such claims as stated to me by Mr. Naeher, Mr. Hemler, who had done every thing in the matter of carrying out my views, in the construction of round cornered safes, with cold bent angle bars, might also take a notion to leave our employ, and make a similar claim. So I went to see my patent attorney, Mr. Murray, and told him that I intended drawing up a paper, present it to both Mr. Hemler and Mr. Goehler to sign. He told me it was not necesssary to do anything of the kind, but I nevertheless did so of my own accord.

Adjourned till 9:30, A. M., Friday, January 5, 1883.

9:30, A. M., January 5, 1883. Met pursuant to adjournment. Present, witness and same attorneys.

Q. 28. Please examine "Mosler Exhibit A., A. B. Benedict, Notary Public," now handed to you. State in whose handwriting it is, when, if ever you saw it before, and if it is the paper referred to in your last answer. State all you know about it.

A. 28. It is in my own handwriting. It is the same paper referred to in my last answer, and was written on he same day of its date, February 11, 1882, after Mr. Goehler had notified us that he had accepted a

position with Mosler, Bahmann & Co., as I had received information through Mr. Naeher; besides, when I had previously charged Mr. Goehler with his intention of making the same safe down there that we were making, I had Mr. Hemler and Mr. Goehler called into the office, and, before requesting them to sign the paper, carefully read it to them in English. Mr. Hemler said that he had no objections to signing the paper, and thereupon signed it; but Mr. Goehler did not, as he stated he would like to have it translated into German. Thereupon I called Mr. Graeser, and they stepped into the adjoining room, where Mr. Graeser translated it to him. Am almost positive that previous to having it translated to him, I told him the contents of the paper in German. When they returned from the adjoining room, I am positive that he was aware of the full contents of the paper, as he stated he did not want to give any of his rights away. I told him it was immaterial to me whether he signed it or not; so the matter was dropped until revived again by Mr. Goehler himself, which happened in the evening the same day. Mr. Goehler came to me and asked for that paper, and I believe stated to me that he had considered the matter, and wanted to sign it; so I had Mr. Graeser give me that paper, in whose possession it was, at the same time again told Mr. Goehler that it was immaterial to me whether he signed it or not. Furthermore, I am positive that Mr. Goehler must have understood the contents of that paper when I read it to him in English. My strong belief, so expressed, is owing to my having previously spoken to him in English, and he always understood me; besides. we have an order-book in which special orders are written in English. He always read these himself without asking for a translation, and some of these orders have considerable more reading matter than that paper contained, which I handed him for perusal and signature.

Q. 29. Did you have any conversation with Mr. Goehler on any subject between the time he declined to sign the paper and the time he did sign it? and, if you did, please state what the conversation was about, giving the language used by each of you, if you can; if you can not, give the substance of the conversation as nearly as you can remember.

A. 29. Mr. Hemler came to me and told me that Mr. Goehler had said to him that if we would pay him the same salary that was offered to him by Mosler, Bahmann & Co., $18.00 per week, he would prefer to remain, as his only object was to leave our employ on account of being offered $18.00 per week by Mosler, Bahmann & Co., and that I had

made him no offer whatever, that is as to an increase of salary, which I believe was $16.00 a week. Mr. Hemler then agreed with me, saying that I had better give Mr. Goehler the same salary, as it did not amount to much, and would avoid considerable annoyance; for, if Mr. Goehler went to the Mosler, Bahmann & Co. he would no doubt try to induce some of our best men to go with him; thereupon Mr. Hemler stepped out and brought Mr. Goehler into the office. I then asked Mr. Goehler if money matters was the only reason he desired to leave our employ, and why he did not speak of this to me before; for, if that is the only obstacle, to avoid his leaving us, we would pay him the same salary, $18.00 a week, that he had been offered by Mosler, Bahmann & Co. He assented that that was the reason, and I thereupon told him that I was greatly surprised that he had not mentioned the matter before. He replied that that was a very delicate matter for him to speak of; so I said to him: You are, as a general thing, a good talker, and that to come to me and speak of a matter that concerns your interest ought to have been no scruple to you; besides, you had fortitude enough to go to Mosler, Bahmann & Co. and ask for a position, as also to fix your own salary. He then assured me, as on a previous occasion, that he would not leave our employ for two or three weeks, or at any rate not until we had a man sufficiently worked in his place; so the matter ended here and he went out to his usual work. My brother Julius and myself then agreed, in order to convince Mr. Goehler that an increase of salary was no drawback to us, and that we did appreciate Mr. Goehler's services, we would, instead of giving him $18.00 a week, give him $19.00 a week. I then went out into the factory, saw Mr. Goehler in the filling room, and told him what we had concluded to do for him. He seemed highly elated over the matter, and assured me that he would, under no consideration, leave us, or go near Mosler, Bahmann & Co., in reference to the position at their place.

Q. 30. You may please state whether you ever had any conversation with Mr. Goehler previous to the time referred to in your former answer, about the invention here in controversy, or about your application for a patent for the same?

A. 30. I think it was the early part of December, 1881, that I told Mr. Goehler that I was going to take out a patent on round cornered safes with bent angle bars, as we were then constructing them, and would probably want him to go with me to the patent lawyer, Mr. Murray. However, I told him I did not think it was necessary for him

to go with me, but, in case that I required him or wanted his presence, to hold himself in readiness to go with me. I then went, consulted my patent attorney, Mr. Murray, and told him that I had spoken to Mr. Goehler, that he would probably require his presence. Mr. Murray thereupon asked me why I wanted Mr. Goehler's presence in getting out the application. I told him that in as much as my instructions were all to Mr. Hemler, and as Mr. Goehler came to work when Mr. Hemler was absent, and showed me that angle, which was really the same as my invention, as my idea, that Mr. Hemler was working upon. I did not know but that he might lay some claim to it. After fully explaining the matter to Mr. Murray, he told me I was very foolish to think of such a thing, as all that was done was simply to carry out my instructions, and that, if any such a thing was allowable, he himself would be the inventor of almost every application for patents he takes out as solicitor, as he also carries out the instructions given to him by parties making applications.

Q. 31. Did you subsequently inform Mr. Goehler as to the conversation you had had with your attorney, and state to him any reasons for not needing his presence?

A. 31. I do not remember of having fully detailed this conversation to him. At any rate, when he come to me later, and asked whether I wished him to go with me, I think I gave him to understand the substance of my conversation with Mr. Murray, at the same time telling him that Mr. Murray had told me that his presence was not necessary.

Q. 32. Do you know or recollect, whether Mr. Goehler was informed at that time, or at any time subsequent thereto, and previous to the day he signed that paper, that you had made application for a patent on the invention, here in dispute?

A. 32. He certainly must have known. In the early part of December, 1881, when I first spoke to him that I would probably desire his presence at the patent lawyer's, and stated what for, that I was making application for a patent on a round cornered safe with the bent angle bar, now in controversy, or why should I, at that time, have spoken to him about the patent attorney, as there was nothing else in view, or that we were making new and patentable, except that new safe. I can not recollect if the matter was talked of any thereafter.

Q. 33. Please state, if you remember, any conversation you had with Mr. Goehler, in which conversation he, Mr. Goehler, complained about any remark made to you in his presence by Mr. Hemler; and, if

you do, please state the conversation you had with Mr. Goehler, or the substance of it.

A. 33. I do not clearly now remember any special conversation, but if there was any special conversation of that kind, or complaint, I think, if the instance would be referred to, I would, no doubt, be able to recall it to memory.

Q. 34. I refer to a conversation which was related by Mr. Goehler in his testimony, which he states took place about the 4th, 5th or 6th of November, 1881, after working hours, when a Mr. Greenleaf, Mr. Goehler, your brother and yourself were walking up street from your factory. Do you recollect such conversation?

A. 34. I recollect that Col. Greenleaf was here; we all walked up together, and I left him at the Grand Hotel. As much as I remember, Mr. Goehler made some complaint as regards to Mr. Hemler, and I think it had reference to something that had happened during that day, and I may have said to Mr. Goehler, as is customary, when complaint is made, to say you need not worry about it, I will give the matter my attention; meaning, thereby, that if there was any misunderstanding between the parties, that I would try to have the matter amicably settled.

Q. 35. Please state the names of all the persons to whom you explained your invention, prior to the 1st of November, 1881, and how you explained it to each, as nearly as you can recollect.

A. 35. I first explained it to Mr. Hemler previous to my departure to Europe, in January, 1881. He had just completed some orders for some round cornered express boxes having angle frames on the outside, but welded at the corners, and not as shown in my invention, for the corners were cut out in an entirely different manner than lapped over to be welded, and, as I had sometime, I believe in the year 1879, had my patent attorney get copies on round cornered safes, no matter how they were constructed, if any patents on them existed. Upon a careful examination, he informed me there was no patent on the round cornered safe, and that, if we desired to make them, we could go ahead and make them; but, upon careful consideration, I found that if to use welded round cornered angle frames, the cost of constructing safes would be increased instead of reduced. So the matter was then dropped till after Mr. Hemler had come with us in 1880, and made some round cornered express boxes. The idea then struck me that if an angle frame could be made to be bent cold, and, to avoid blacksmith

work, it would perhaps be advisable to make a round cornered safe, as in this manner we would have an angle frame that would answer about the same purpose as a welded angle frame would, and a greatly reduced cost. I did not adopt the curve of the express boxes then made, but gave Mr. Hemler the correct circle of the angle that I wanted at that time, or immediately upon my return from Europe. The next step after my return from Europe, I instructed Mr. Hemler to at once proceed and get up what I had previously directed him to do. I then informed my brothers, Max and Julius Mosler, also stockholders of our company, of the idea I had conceived, and to explain it more minutely to them. I used several cards to represent the idea. They were at first opposed to the idea of making any further change, as we had then adopted, and given an order to Mr. Brown, the pattern maker, to get up an entire new set of safe patterns, having eight flanges, and combining my invention of beveled corner with wedge-proof socket bolt, patent for which was issued March 22nd, 1881.

Adjourned till 2 P. M. of this day.

Met pursuant to adjournment. Present, same parties at 2 P. M. January 5, 1883.

Answer to question 35 continued.

My next move was to come to see Mr. Murray. This was sometime in September, 1881, and explained the matter fully to him, so that he could prepare an application for a patent for the invention in controversy, upon his advice. As previously stated, the matter was deferred until December. Besides the above, I think, in fact I am almost sure that I explained it to another brother named William Mosler, who is also a stockholder. Can not recollect any other parties, and hardly think that I showed it to any one else, because it is customary with me whenever I invent anything, to say as little as possible about the subject to any one.

Q. 36. You will please state, as near as you can, when you first learned that Mosler, Bahmann & Co. were making preparations to construct safes containing the inventions here in controversy, and, if you had any correspondence or conversation with them, state when it was, and the substance of it, and you may also state when you first learned that Mr. Goehler had made application for letters patent upon this invention.

A. 36. I first learned that Mosler, Bahmann & Co. were making preparation to make the safe here in controversy some time after Mr. Goehler had left us, and it was near the time, when the claims on my application for a patent were allowed to me, and the patent was to have been issued a few days thereafter, as my claims had been allowed for the invention of constructing round cornered safes with cold bent angle bars, having received information that Mosler, Bahmann & Co. were preparing to make this same safe. I promptly notified them in a letter, of which I have a copy, in substance, saying that the patent had been allowed to me, and that I hereby notified them in time so that they may save themselves unnecessary expense and trouble in constructing machinery, etc., that would prove useless to them; and the first time I learned that Mr. Goehler had made an application was shortly after the above letter, by Mr. Heintz calling upon me and wanting to ascertain when the patent was allowed to me. I gave him the necessary information. I can't give the exact date, or approximate, unless I refer to the copy of the letter which I have at the factory, which will be a guide for me.

Q. 37. How long before or after that letter was it, as near as you can recollect, that you learned that Mr. Goehler had filed an application for a patent on the same invention for which your application for a patent had been allowed?

A. 37. It was not before I sent that letter, and how long after the letter was sent I can not now say.

Q. 38. In question 5 I asked you how the invention which you explained to Mr. Hemler before your departure to Europe, and after your return therefrom, compared with or differed from the invention shown, described and claimed in your application here in interference, and you say the only difference that you know of is a slight change in the upper cut to permit it to come together, which change you suggested. Will you please make your answer to question 5 more definite, and refer for explanation if you like to any of the Exhibits; either paper Exhibits or Models which were offered in evidence while Mr. Hemler was testifying, and which are now before you, and the notary is requested to read question and answer 5?

A. 38. "Hemler Exhibit No. 2" was not made exactly as I had shown Mr. Hemler what I had desired, for I had instructed him to cut out more in the corners and rounding; and where his "Exhibit No. 2" showed it concave I wanted it convex, and cut out more in the corner,

as indicated in "Moses Mosler Exhibit No. 5." Mr. Hemler contended that he wanted to avoid making the tools too thin on account of their being more apt to get out of order than if there was a rounding, such as he had made in "Hemler'Exhibit Unbent Angle Bar No. 2." I then told him at that time or later, after he had shown me his card or pasteboard, that it would be necessary for him to cut out sufficient on the upper rim, so as to permit it to bend the proper curve and close up. It is difficult for me now to remember all the detailed instructions that I had given to Mr. Hemler, as I never expected or had reason to believe the controversy in question would arise.

Q. 39. I ask you again if you can state how the invention you explained to Mr. Hemler before your departure for Europe, or immediately after your return therefrom, compares with or differs from the invention shown, described and claimed in your application here in interference, and what, if any difference there is between the shape or formation of the cut in one web of the angle bar shown in your present application explained to Mr. Hemler shortly after your return from Europe, or before your departure, or embodied in the angle frames which you are now making at the Mosler Safe & Lock Company? And, if you can't state positively, give your best recollection as to these matters.

A. 39. As far as the idea that I gave Mr. Hemler is concerned, I fail to see any difference from what I at first directed him to do. I fail to see any difference between the invention explained by me to Mr. Hemler before my departure for Europe, or immediately after my return therefrom, and the invention showed, described and claimed in my application here in interference.

Q. 40. What, if any difference is there between the shape of the cut in the angle bar which you say you explained to Mr. Hemler, and which is shown in your present application here in interference, and the shape of the cut in the paper or pasteboard which you say Mr. Goehler showed you in your office?

A. 40. The difference is that in the one shown me by Hemler, which is similar to Hemler Exhibit No. 3, the upper cut of cut away web is cut straight, instead of rounding, as shown in my "Moses Mosler Exhibit No. 5."

Q. 41. At the time you stated to Mr. Goehler that his presence would not be needed when the application for a patent was to be made, or at the time, or times, February 11, 1882, when you presented the paper

to him for his signature, or in the conversations you had with him upon that day, did Mr. Goehler claim, in your presence, that he was the inventor of any part of the improvement here in interference?

A. 41. He did not; besides, when I put the question to him, which I did, I believe, after he had refused to sign that paper, if not all he or Mr. Hemler had done, was simply to carry out my instructions, he assented.

Cross-examination by Moore.

X-Q. 42. You will please examine "Goehler Exhibit Model Mosler Round Corner Safe Nos. 1 and 2," and state whether there were ever any safes with corners constructed like the models respectively made by your Company. If so, how many of each, and when was each one made, as nearly as you can tell?

A. 42. From looking on the inside I am not prepared to say how many of each were constructed, but turning them over and looking at them from the front, I think that there were no more than five or six of such safes made by our Company. The dates when they were made or the time I can not state.

X-Q. 43. Did you make safes that each model would be a representation of, and about how many of each?

A. 43. I can not say definitely that we made safes representing each of these models, but in all I don't think our company ever made more than five or six round cornered safes.

X-Q. 44. Do you know when the first one was made, and when the last; or, have you any means of finding out?

A. 44. I can not state the time when the first was made, nor the last. The only record from which I could ascertain would be to refer to the reports that were handed into the office by the superintendent, giving a list of the safes filled each day.

X-Q. 45. Were these safes made for stock, or upon special orders?

A. 45. The first one or ones were made, I think, upon an order received from Burmuda Islands. Some of them may have been made for stock.

X-Q. 46. Doesn't your order-book show the construction of every safe that is not of the general construction made in the factory?

A. 46. It does with the exception of fire-proof safe, the orders for which are generally written on a separate sheet. The superintendent

retains them until he has filled all the orders on that sheet; besides, that sheet is not returned to us.

X-Q. 47. Will you bring the order-book for 1881, at the next adjournment; that is, to-morrow afternoon, and submit it to the counsel for Goehler, that he may cross-examine you with reference to its contents?

Counsel for Mosler instructs the witness that he need not submit general order-book, containing the records of his business, to the examination of the attorney for Mosler, Bahmann & Co., who are his competitors, but that, if the counsel for Mosler, Bahmann & Co. will indicate any special entries, made during any specified time, and with reference to any safe or safes, which contain the invention here in controversy, he will submit such entries, or transcribe such entries as gives every opportunity for a fair cross-examination, not inconsistent with the interest of the concern, of which he is president, in matters not relating to the questions here in dispute.

A. 47. What order-book do you refer to?

X-Q. 48. I want the order-book of original entries, kept in the office, as that, I understand, will show what was upon the sheets referred to by you, and the parts of it that I wish to examine, comprise all entries or descriptions of fire-proof safes with rounded corners, of a date earlier than November 1, 1881, and that there may be a perfect understanding about this matter, and that you may be well advised of the risks you will take in interfering with counsel for Goehler, in getting at the proper proof of the statements that you have made, and that all doubt may be removed. As to the legitimate intention of counsel in calling for this book, I will say, that it will be entirely satisfactory to me, that the book be submitted to a proper person, who shall be sworn not to divulge to your competitors, or any person else, any of the contents of that book, except in so far as he finds therein entries of descriptions of fire-proof safes with rounded corners; or, I myself will make the examination, and either give my promise upon honor or upon oath, not to divulge any of the contents of that book, except as above stated, which entries of descriptions I should make copies of.

A. 48. I still do not know what book you refer to.

Counsel for Mosler will state, that if the desire upon the part of the opposite side, is simply for a fair cross-examination, that it be

stated specifically what answer in the deposition of this witness is desired, to be controverted by reference to these books, and what particular entries, and between what dates he wants to inquire about; and when the examination to-day will be adjourned, it will be till to-morrow afternoon, to accommodate the officer, and the counsel on the opposite side can take the testimony along this evening, select the portions of the witness' deposition that he desires to controvert the witness about, with reference to the book or books, so that the time of counsel and witness may be saved as much as possible; or, if counsel desires, and if it is agreeable to the witness, he may spend to-morrow forenoon at the office of the Mosler Safe & Lock Company, obtaining such information as he desires. But, as it appears from the deposition of this witness not only, but of Mr. Goehler himself, that the Company are making, and have been for some time, more than 500 safes per month, it is believed that no purposes of justice or fairness requires that the books of the company should be taken away and kept for the time it would require to make such examination; besides, as Goehler has the closing of this case in rebuttal, his counsel knows how to get possession of those books if he wants them, and let the examination and expense of printing the record be paid by the contestant in this case.

X-Q. 49. Please state what books were kept during 1881 that might fairly be called order-books, and the character of the contents of each.

A. 49. I do not think that such a question should be asked of me, inasmuch as you have made a demand for a certain order-book. Now, if Mr. Moore, the counsel for Mr. Goehler, desires to examine a certain book, let him state what book he desires, for there surely seems to be a certain book that he wants to examine.

X-Q. 50. I asked for the order-book of original entries. I, of course, have no information as to what books are kept by the Mosler Safe & Lock Company, nor as to the contents of any of them, but my general understanding is, that every safe factory keeps a book or books, which contains short descriptions of safes that differ from the safes ordinarily made, and which are usually called stock. For this book, by whatever name known, I have asked; and to this you have replied upon oath that you don't know what I want. To which I rejoined by asking you for such short description of the character of such books kept by your Company as would enable me to put the question in more specific shape, and the matter that I want is the customary short description that

such a book should contain of all round cornered fire-proof safes made from the 1st of January to the 1st of November, 1881. Will you give me that book in the manner asked? or, if you want the question to be more pointed, will you give me the above general information, and then I will name the book.

Counsel for Mosler desires to say that it has already appeared during the taking of testimony in this case, that the present business manager of Mosler, Bahmann & Co. was the book-keeper of the Mosler Safe & Lock Company during at least a portion of the time between January 1 and November 1, 1881, and he should be able to give the information as to the books likely to contain the information desired; and, as he was named in the notice served under which the depositions on behalf of Goehler were taken, and perhaps will be a witness in rebuttal, counsel for Mosler still insists that the opposite side will have ample opportunity to get all the information they want in closing their own case.

A. 50. I am aware that I am under oath, and, regardless of this, have no desire to evade any question which you may put to me. I simply stated, as I do now, that I did not know what book you desired, and when I so stated this, you consulted Mr. Goehler, and I then supposed that you would be enable l to designate what book you desire. Aside from this, you asked me personally, saying that it had nothing to do with this testimony, if I did not feel satisfied to permit you to examine the book, and I told you that your word was sufficient, and I would cheerfully show you any book you desired. Now we have two books, one book in which we give our orders to the superintendent, a general order-book of orders daily received. Now, if you will state which of these books you desire to see, I will, with the consent of my counsel, cheerfully show them to you to-morrow morning, if you will call at the office of our Company.

Adjourned till 2 P. M., Saturday, January 6, 1883.

Met pursuant to adjournment, at 2 P. M., January 6, 1883. Present, same attorneys and witness.

X-Q. 51. Strictly speaking, it is not a particular book that I want; that is, there may not be any book that in itself contains just what I want. What I do want is permission to examine such entry or entries as will show the actual construction of all round cornered fire-proof safes during the year 1881, and prior to November 1, and I want to see

any order-books that may have been kept by the Company during that time that will give this information. And I again ask you what books this information is contained in, if any, and whether you will furnish such books for the examination of Goehler's counsel, and under any reasonable restriction as to the use to be made of the books that you may desire.

A. 51. I did expect that you would call at the office of the Mosler Safe & Lock Company, and really waited to nearly noon, and will now say, as I did before, that I will cheerfully show you the order-books of our Company for that time, and, as far as the restriction is concerned, I will leave that part to my counsel, Mr. Murray, to dictate or suggest.

Counsel for Mosler states here that opposite counsel may, at any time he desires, call at the office of the Mosler Safe & Lock Company, and have free access to all books which he may think contain any information whatever bearing upon this case, make transcripts of such entries as he desires to use, the only restriction being that the names of customers and the private business of the Company having no relation to the matter here in controversy, be kept from competitors, Mosler, Bahmann & Co., or that, if he will call at the office of the Mosler Safe & Lock Company, select such books as he desires to be brought here, for the purpose of a fair cross-examination of this witness, they will be brought here for him, and while it was supposed that the counsel would obtain such information as he desired this morning, if he did not understand the invitation, to do so given last evening, the examination will be again adjourned to accommodate him.

X-Q. 52. Will you please state what books, if any, kept by the Company, contain the information sought for in the last question, or what books probably contain it?

A. 52. I do not know whether any of the books will contain the information you desire, and the only book that I think will show it is the book in which we enter the orders for the superintendent and foreman in the iron department. Yet, if there is any other book of which I do not think just now that you may desire to see, or that may be suggested by the party you represent, I will cheerfully show it to you.

X-Q. 53. As I understand it, the superintendent's book shows or describes the construction of any particular work to be done, in so far as such work differs from the ordinary every day manufacture of safes. I want to know, first, if I am right about this; and, second, I want to

know if the general order-book usually contains the same information, or whether the description in the latter is customarily more or less full than that contained in the former?

A. 53. You are right in the first respect. I do not think the general order-book gives as detailed a description as the superintendent's and foreman's book, yet I am willing to have you examine that book, if you choose to do so.

X-Q. 54. Did you examine these books or have them examined, for the purpose under consideration, since the last adjournment? If you did, state what information you found in them, or either of them, indicating which, as to the number of round cornered safes made by the concern, during the time indicated, as to the construction of each.

A. 54. I did not examine, nor look for the general order-book, as the book that we are now using, I believe, is the same one used at the time indicated; but I had the superintendent's book hunted up, having in view that you would call this morning, and want to see it. While I looked at the book, I did not look through it nor examine the contents, to ascertain how many round cornered safes were made, but I had Mr. Greaser, one of our clerks, indicate each page by laying a piece of paper between the leaves, to show where there were any remarks referring to round cornered safes; and I could not now say how many pages he indicated; and I have the book still in the same condition, and can show it to you any time you want to see it, as I have brought it with me.

X-Q. 55. I have examined the book you have presented to me, which commences some time in February, 1881, and find between the commencement and December of 1881, two entries, and two entries only, referring to round cornered safes, and one of these is for express boxes, and the other does not indicate the character of construction. Is that right?

A. 55. In what you have stated, you are right, but I here desire to say, that the entry for the round cornered safe was made March 25, 1881, during which time I was in Europe; the other entry for an express box, dated August 3, 1881, was made the same as the express boxes, previous to my departure for Europe, with angle frames having welded round corners. I suppose that this was the way it was made. However, I did not see it or examine them.

X-Q. 56. The round cornered safes referred to the entry in the

order-book for which is dated March 25, 1881. How were they made, with or without angle irons, if you know?

A. 56. That is a question which I am not prepared to answer, for during that time I was in Europe.

X-Q. 57. Will you, at the next adjournment, bring with you original order, No. 7,074, showing the construction of such safe?

A. 57. I will, if I can find it, bring it with me; but, if there is a price, showing what the safe is to bring us, I will now ask for the counsel, Mr. Moore, that he will not divulge the price, or where it goes to, but will only refer to the construction.

In answer to the request, counsel for Goehler desires to say, that he personally will not divulge anything contained in the order, but may ask the witness, if, for any reason it becomes important in this cause, to state such particulars.

X-Q. 58. Is it not the universal custom when work is ordered by you, from the superintendent of different construction, from that ordinarily made, to have a short entry in the superintendent and foreman's book, indicating such construction?

A. 58. It is the custom for us to do so, in case special work is ordered upon orders received from purchasers; but, when I desire anything special made that is not ordered, I simply give the superintendent such instructions as I may think necessary, and no entry is then made.

X-Q. 59. And in that case, as I understand you, none of the books kept in factory or office would show the character of such construction. Is that right?

A. 59. That is right.

X-Q. 60. Would you, in reference to any important construction, be content with such verbal instructions only, and thus deprive yourself of every sort of evidence for future refererence, that such work had been made?

A. 60. I am free to say that in the future, no matter whether the construction be an important one, or so considered at the time I give the order, I shall take good care that a proper entry is made, so as to be enabled to refer to it at any time I should find it necessary, for the experience in this case has taught me a good lesson; but I failed to do so in the past.

X-Q. 61. Upon further examination of the superintendent's book, we have fonnd an order dated November 25, 1881, No. 8928, of a round

cornered safe, to be filled from the bottom. I want to know, first, if this is not the first round cornered safe made by your company, which was filled from the bottom? Second, I want to know what the construction of this was with reference to bent angle bars; and third, I want to know, from your knowledge of the ordinary course of manufacture, in what state that safe was with reference to completion, upon the 25th day of November, 1881; and, if it be necessary, in order to answer this question, you may examine the superintendent's book, or any other that you know of.

A. 61. I do not remember whether this was the first round cornered safe, filled from the bottom, that was made by our Company, but I hardly think it was. I now remember, in reference to the above, that I had a conversation with a gentleman by the name of Mr. Julius Cohn, of the firm Cohn Bros. & Co., of this city, some time before the order referred to was received, and it was at his instigation that we made Mr. Phillips the safe referred to. Mr. Cohn being a friend of Mr. Phillips, called upon us, and told us the back of the safe that Mr. Phillips had was coming out, and that Mr. Phillips had complained very bitterly to him about the safe. Mr. Cohn advised us under the circumstances to give the party a new safe, which we some time thereafter concluded to do, and I believe at the time Mr. Cohn was there I took him into the paint room and showed him a safe constructed the same as we construct them now—round corners, cold bent angle bars, and filled from the bottom instead of from the back, as Mr. Phillips' safe had been filled. In connection with this entry I will say the reason it was made in the superintendent's book was on account of its being termed a special order, as the entry itself states that the handle on the inside door is to be like right handle of vault door. The order was no doubt entered the same day it was received, November 25th, so I am not prepared to say whether there was anything done on that day or not.

X-Q. 62. Wasn't that order filled with a safe built upon the angle bars, or one of them, cut and bent by Goehler upon the 4th of November, 1881?

A. 62. That is something I can not answer, as I did not make the safe, nor did I pay any attention as to what became of any angle bars bent at any time.

X-Q. 63. Are you willing to say from the examination that Mr. Graeser made of the superintendent's book, taken in connection with the examination made by all of us, of the same book this after-

noon, that there is no entry of a round cornered safe prior to the one just referred to, November 25, 1881, except the one previously referred to as of March 25, 1881?

A. 63. First, I will say, as previouly stated, that I have not examined the superintendent's book carefully through, nor has any one present, to my knowledge, carefully examined the contents of that book except Mr. Goehler, so I am not prepared to say whether any other entries are not in that book, unless I examine it carefully myself.

X-Q. 64. Will you please make such an examination, and answer the above question after the next adjournment?

A. 64. From this question, I see that I have not answered the previous question fully. I will say that I have used or sought, every channel possible, to ascertain when the first round cornered safe with bent angle bars, similar to the one now in controversy, was made or shipped, and the only record that I have been enabled to find, was a superintendent's report of a safe's being filled on October 20, 1881, simply indicated round corner. I have tried to trace the safe, but have failed in succeeding to do so; and, should you desire any further search, and will make any suggestions, I will be pleased to follow them. I will make such examination as you ask.

X-Q. 65. I have understood you to say that half a dozen more or less round cornered safes like the "Exhibits Mosler Models" were made by your Company at some time. Can you state whether safes were made representing each of the models, Nos. 1 and 2, or which of them represents the safes that were made, if but one kind was made?

A. 65. Can not say if both kinds were made, looking at them from the inside, but I think they were similar to "Goehler Exhibit Model Mosler Round Cornered Safe, No. 1."

X-Q. 66. Then you don't know of any having been made, subsequently, like "Goehler Exhibit Model Mosler Round Cornered Safe, No. 2," do you?

A. 66. I do not.

X-Q. 67. The safe that you say was reported to be filled on October 20, 1881. Do you recollect its construction, with reference to bent angle bars, and, for a second question, have you any documentary evidence of any sort or character, tending to show its construction?

A. 67. I do not know whether I saw that safe or not. I have thought of everything, and know of no documentary evidence.

X-Q. 68. I have understood you to say that there was a safe or

safes built upon angle bars, like "Hemler Exhibit No. 2." Will you please state, more specifically, how many, if more than one such safe was built; second, when it or they were built; and third, have you any documentary evidence to show either of these facts?

A. 68. I can not say how many of such safes were built, and have no documentary evidence to show or to refer to. I can not say exactly when I saw that safe, but I am quite positive that it was just previous to my departure for Rochester, New York, or immediately after my return, the end of October, 1881.

X-Q. 69. Please state in what state or condition, with reference to completion that safe was in when you saw it, and if you saw it in different stages of its construction, describe each such stage, and state where it was at each time that you saw it, and state what there was about it that enabled you to recollect the safe.

A. 69. I do not remember of having seen it in any other stage than before it was ready to be filled or after it had been filled—can not state positively whether it was filled or not, but am quite positive that the safe had not been painted. Mr. Hemler called my attention to it, and I then told him that the opening in the upper corner of the round angle was too large, and that the cement would constantly eat through it, and, in order to avoid this, to metal the whole. I think I saw the safe in the filling-room, or in the first floor of the iron department. The reason I remember that safe was on account of the opening shown to Mr. Hemler as stated.

X-Q. 70. You have stated that you entered into a contract October 29, 1881, with one Warner, with reference to the construction of round cornered safes, and Max Mosler stated that there was another similar contract with H. D. Carey, or H. D. Carey & Son, dated prior to November 1, 1881. Will you please produce, after next adjournment, your duplicate of each of these contracts?

Objection. The question is objected to by Murray, because it mistakes what the witness has testified to, and by reference to his answers it will be seen that he did not state that the contract mentioned in terms, round cornered safes.

A. 70. I do not think that I stated that the contract I made with H. H. Warner contained anything in reference to round cornered safes, but the contract was made simply because the construction of our present round cornered safes was a part of the consideration on our part to

induce us to make a contract with Mr. Warner, and agreed to furnish him safes at lower prices than we had ever furnished to any one before. I will here state that the contract has no reference whatever to the round cornered safes; also, that the contracts referred to by Mr. Max Mosler have no reference to round cornered safes. I do object to bringing these contracts here as they contain matter that would be of considerable interest to our competitors; yet, if my word of honor that these contracts do not contain anything in reference to these round cornered safes, or other round cornered safes, I am willing to submit them to your examination at any time.

Adjourned till 2 P. M., January 8, 1883.

Monday, January 8, 1883, 2 P. M. Met pursuant to adjournment. Present, witness and attorneys for Goehler and Mosler.

X-Q. 71. Are you prepared to answer questions put to you before last adjournment *vidilicit*. Have you original order of March 25, 1881, and second, are you enabled to answer as to whether there are any round cornered safes referred to in the superintendent's book, prior to the 1st of November, 1881, other than those previously mentioned?

A. 71. I am prepared to answer the questions referred to, and herewith hand you the original order referred to, and will say that I have carefully examined the superintendent's book to November 1, 1881, and find no further reference as to round corners, besides the safe and express box, that has been mentioned, except another express box, but I understand that is not included in your question.

X-Q. 72. The following language from said order is all that it contains, with reference to the construction of round corner; is it not? "Please send me one No. 2 safe with combination lock, round corners, like the last, and filled with dry filling."

A. 72. That is correct.

X-Q. 73. As I understand you to say there was a safe built upon angle bars like "Hemler Exhibit No. 2," and it is intimated in your answer 68, that there may have been more of such safes. I want to know first, did you ever see any but one, and, if at different times, state the times; and second, I want you to state who cut out the angle bars for either, who bent them, who made the boxes for those safes. State all the names of workmen who had aught to do with them?

A. 73. I can not recall to memory how many I did see, but I saw

more than one cut out like "Hemler Exhibit, No. 2." Neither can I tell as to the number of times I saw that safe, as my attention, as I remember, was called to it on the particular occasion, when I showed Mr. Hemler the opening in the corner, and at that time, I believe, I instructed him that future angles must close tightly. I do not know who cut them or bent them, nor can I state the names of any of the workmen that worked upon the safe.

X-Q. 74. Did you ever see such angle bars—I mean bars like "Hemler Exhibit No. 2," while being cut or being bent, or after they were bent, and before they were worked into a safe? If you did, state the time or times, and place or places; when and where you saw them, and state the name of any living person who also saw them, other than Mike Hemler.

A. 74. I do not remember of having seen them, while being cut or bent, yet it is possible that I may have seen them after they were bent, and have paid no attention to them, as my stay in the iron shop was always of short duration, so I can not positively make the assertion that I had or had not. The latter part of your question I am not prepared to answer.

X-Q. 75. Was this safe made in pursuance of specific instructions from yourself to Mr. Hemler? If it was, please repeat the instructions you gave him; and, if you made a sketch, or cut a piece of paper to illustrate your idea, please refer to some of the Exhibits in the case, if any there be, that will illustrate what you showed to him; or, was the safe in question made in pursuance of a general instruction to devise and perfect a round cornered safe?

A. 75. I might say that the safe was constructed in both specific and general instructions that I had given Mr. Hemler from time to time. The specific instructions were that he take immediate steps to construct a round cornered safe with bent cold angle bars, such as I had often spoken to him of, and especially having the corner round the same circle that I had given to him. I do not remember that I, at that time, made any cut or drawing, as this was not necessary, as Mr. Hemler knew fully what I wanted; and, in fact, all that was necessary was to lay a round angle corner before Mr. Hemler or any good mechanic, and give a description therefrom, instead of making any drawings or cuts.

X-Q. 76. Did you or not, when giving this instruction, whether, with reference to another round corner, or otherwise, describe the lines upon which this angle bar was to be cut?

A. 76. There was no other round cornered safe in question, as this safe was always figured upon to construct. As Mr. Hemler was fully aware of the corner the way I desired it. It was not necessary then to go into any special details.

X-Q. 77. Then, if I understand you correctly, when you ordered Mr. Hemler to make the safe in question, your instruction, so far as description of the safe in question was concerned, was limited to the character of curve the corner should have, and for the character of the cut of the angle bar, you relied upon prior instructions given to him as you say, either immediately before you went to Europe, or immediately after your return. If this be not correct, please make it so.

A. 77. You are correct, with the exception that the cut was not particularly relied upon, as I left this entirely to Mr. Hemler's judgment, as his main object was to introduce a cut that would be more rounded, so that the punch could be made in one piece, and punch the corner out in one stroke, besides protecting the punch at its edges.

X-Q. 78. Is this the same safe that you have said was reported to be filled, that is, as having been filled, on October 20, 1881?

A. 78. I can not say whether this was the same safe or not.

X-Q. 79. When did you find that report? Which if any, of the books of the company shows it?

A. 79. To my knowledge, none of the books of the company show it. The report was found among the reports of safes filled daily, and said reports were handed into the office by the superintendent.

X-Q. 80. Are not these daily reports of filled safes regularly entered up in a book, and were they not so during the year 1881, and what is the name of that book?

A. 80. They are; and they were so entered during the year 1881. The name of that book is a sort of a stock book.

X-Q. 81. Is it, or is it not a fact, that every fire-proof safe entered in that book, which is of different construction in any particular, from the safes then customarily made, has some short description appended, pointing out such difference of construction?

A. 81. No, it is not; and, furthermore, it has not been customary with us, whenever any change is made in fire-proof safes, to enter the safes made, having such changes in any way, except as such a number of fire-proof safe. The book referred to, only contains such safes as remain in stock, and the number carried on hand. Only designate safes for which we have no orders, and the accounts of such safes remaining

in stock, are carried on in pencil, so that whenever a safe is filled, the number indicated can be changed accordingly; and, as the safes bear no number until they are ready for shipment, when a running handle number is stamped on them. We can not tell how soon after the safe is filled, that it is really shipped, and, in this way it occurs, that safes may not be shipped for two or three months after they are filled.

X-Q. 82. You say that Mr. Hemler was anxious to get a cut in or for the angle bars, such that a curved punch could be used. Do you know of any efforts made by him, at any time, to devise such a tool, or any experiments made so as to determine the amount of curvature that would be practicable. If you have any such knowledge of your own, state it with definiteness, in reference to time; or, if you have no such knowledge of your own, but have information imparted to you from Mr. Hemler, state fully and specifically, every such communication made with the time of each.

A. 82. I do not personally known of any special efforts made by him except that he would tell me from time to time, when I asked him what he was doing in the matter, he would say that he was pushing it as much as he possibly could. I can not state any special time or times that we conversed upon the subject unless I should happen to think of something that would fix a time for me, and as I have the supervision of two manufacturing businesses, and each producing different lines of wares, it is impossible for me at this late date to go minutely into details as to conversations, etc., that have occurred between the years of 1880 and 1881, besides, when Mr. Hemler, who was superintendent of the factory, told me whenever I gave him any instructions, that he would attend to them as soon as he could; that was satisfactory enough to me, and I always gave him his own time, and pay no attention to any of the minor details.

X-Q. 83. In a previous answer, you have stated that you bent a piece of paper to show Mr. Hemler the curve upon which you desired these round corners to be made. What I want to know is, did you fix that piece of paper in its curved form, and is it still in existence?

A. 83. I did not alone bend one piece of paper, but a number of them, all of the forms of which I do not exactly remember. The paper referred to was bent in the form of a round corner, and I believe I did not only show it to Mr. Hemler, as I showed that or a similar cut one to my attorney, Mr. Murray, in the month of September, 1881, when I requested him to make my application for a patent. I do not

know whether any of these papers are in existence or not; at any rate, I do not know what has become of them.

X-Q. 84. You misunderstand question 83. You have been understood to state that you bent pieces of paper around without cutting or creasing into the proper form of an angle bar, for the purpose of illustrating to Mr. Hemler the amount of curve you desired in the round corners of the safe. With this explanation, will you please answer question 83?

Objection. Question is objected to by Murray, as a misrepresentation of what the witness did, and counsel is requested to refer to the answer in which such statement is made.

A. 84. I do not think I made the statement referred to.

X-Q. 85. I had reference to your answer, to question 35, in which this language occurs: "I did not adopt the curve of the express boxes then made, but gave Mr. Hemler the correct circle of the angle, that I wanted at that time, or immediately after my return from Europe," your attention being directed to the whole of this answer. Did you give that correct circle by cutting a paper templet of a bent angle bar, or by simply bending around a piece of paper, to show the curve of the circle?.

A. 85. I do not recollect exactly how I gave him that circle, whether in drawing, templet, cut, or really in what form.

X-Q. 86. Do you recollect whether you first instructed him as to the form of the desired curve, or as to the character of the cut to be made in the angle bar?

A. 86. I first spoke to him about making round cornered safes, with cold bent angle bars, and before making any cuts, I then spoke to him of the circle I then desired. I spoke about the curve first.

X-Q. 87. Did you speak about the cut in the same conversation, in which you spoke about the curve, or at a subsequent one, and how long subsequent?

A. 87. The above question I can not positively answer, as I do not recollect all details pertaining to the matter.

X-Q. 88. How early are you now willing to swear that you exhibited a paper to Mr. Hemler, that "Mosler Exhibit 5" would be substantially a correct representation of?

A. 88. I am quite positive that it was previous to October 1, 1881, because during that month I had shown the same, or a similar one to

my patent attorney, Mr. Murray, for when I first came to Mr. Murray and spoke to him about the application, and fully explained it, he told me that he knew what I wanted without any illustration, but I nevertheless showed him an illustration as stated.

X-Q. 89. You have been understood to state, that you illustrated what is shown in "Mosler Exhibit, No. 5," by a piece of paper cut into that form, to Michael Hemler, either before you went to Europe or immediately after your return in June, 1881. Have you been understood correctly or not?

A. 89. I am not aware of having made any such statement.

X-Q. 90. Please cut a piece of paper, showing the suggestion or instruction that you made to Mr. Hemler, immediately after your return from Europe.

A. 90. Without making any cuts, as I made quite a number of them, and hardly know which I made first, I will say that when referring to bent angle bar, I believe I referred to an express box, having angle frames with welded round corners, giving Mr. Hemler my views and instructions, and Mr. Hemler always seemed to know what I desired, as I have so far not made any cuts for you, I do not wish you to believe or think that I can not make you proper cuts, showing how an angle bar may be cut out at the corners, so that when the corners are turned round, the cut out parts will meet without overlapping, and make a close fit, instead of making one such illustration, I can make a dozen or more in different forms.

X-Q. 91. Are you sure that you exhibited any cut or drawing, that would be a substantial representation of "Moses Mosler Exhibit, No. 5," prior to the time when you say that you showed it to your attorney. If you are sure of this, state how long a time it was that you showed it to Hemler, before you showed it to your attorney?

A. 91. To the best of my knowledge it was. I can not now tell how long before.

X-Q. 92. Can you not approximate it more closely than this?

A. 92. I would like to, but can think of no circumstance to use as a guide, except that it was before I called upon Mr. Murray, in September, 1881.

X-Q. 93. Is it possible, consistently with your present memory, that you exhibited it to Mr. Hemler months before you exhibited it to your attorney?

A. 93. I would not like to make so broad an assertion, for, as

stated, I know of no circumstance to fix the time exactly for me.

X-Q. 94. Is it possible, consistent with your present memory, that you didn't exhibit it to Hemler more than a day before you did to your attorney?

A. 94. That is a question put in a rather peculiar shape. While everything is possible, yet, according to my present memory, I think it was some time before.

X-Q. 95. Upon what circumstance do you rely for the statement that you exhibited it to your attorney during September, and will not any such circumstance enable you to state the day in September when you showed it to him?

A. 95. Upon my best belief, and the fact that I asked my attorney when I came to him first to make my application, he told me it was in September, and I am quite sure that it was some time before I made the application that I showed it to Mr. Hemler. From the fact that I did not call upon my attorney until I was ready to show him what I wanted.

X-Q. 96. Well, can you state what time in September it was ?

A. 96. I can not state the exact date, as I do not know whether he gave me the exact date; but I am quite sure that he told me it was the middle of September.

X-Q. 97. Suppose he had told you it was in the middle of October, would you now swear that it was before that?

A. 97. From what I now know, I am quite sure that it was in September.

X-Q. 98. Well, if there be anything that aids your memory to the statement that it was in September, other than the fact that your attorney has said it was in September, state what that thing was, and, if that thing enables you to more definitely fix the day than the middle of September, then make such more definite statement.

A. 98. The thing that has fixed the date for me now in September was from the fact of my now knowing from a letter written to Mr. Murray in September by my brother, Mr. Max Mosler, in reference to some invention, which was written a short time after I had seen Mr. Murray.

Adjourned till 9:30 A. M., Tuesday, January 9, 1883.

January 9, 1883, 9.30 A. M., met pursuant to adjournment. **Present, witness and attorneys.**

X-Q. 99. Will you please state how you illustrated your invention to your attorney in September, by sketch, paper cut, or model?

A. 99. I am positive it was by paper cut, and, I think, by sketch; and furthermore, described what I wanted. A model was not furnished to him at that time, or at any time thereafter, as he understood from the start just what I wanted.

X-Q. 100. Is that paper cut or sketch in existence, or within your control?

A. 100. I can not say whether it is in existence or not, as I do not remember whether I left the same with my attorney or not.

X-Q. 101. You will please examine the paper cuts and sketches offered in the case, while witnesses called for yourself, and yourself were under examination, and state which, if either of these, represents the sketch and paper cut you so exhibited to your attorney.

A. 101. "Moses Mosler Exhibit No. 5," represents, substantially, sketches or cuts exhibited to my attorney.

X-Q. 102. And, as I understand you, "Exhibit Moses Mosler No. 5," also represents what you exhibited in cut and sketch to Michael Hemler, prior to September, 1881. Is that right?

A. 102. To the best of my knowledge, yes.

X-Q. 103. Did you ever see an angle bar representing either "Michael Hemler No. 2," or "No. 3," or "Moses Mosler No. 5," in any stage of manufacture prior to being incorporated into a safe, before the 4th day of November, 1881? If you did, give time, place and circumstance.

A. 103. I do not now recollect whether I did or not, but I am positive, from the fact of having seen the safe, constructed with angles like "Hemler Exhibit No. 2," that the angles were made prior to November 4th, as I saw the safe completed before November the 4th, and the reason that I recollect this is, because I instructed Mr. Hemler to metal the corners of that safe, as the bend in that angle in the corners did not fit as closely as I wanted it to, and if the opening was not filled with metal, the cement would be constantly eating through the paint. Mr. Hemler said he could very easily change the cut, as the tools and machinery were not made, and that he would at once go to work at it, and hasten preparations for the construction of these round cornered safes, with bent cold angle bars; and when Mr. Goehler came to me a day or two afterwards, with a slight change in the cut, I supposed my instructions, given to Mr. Hemler, were being carried out.

X-Q. 104. Do you know when that safe was commenced, that is the angle bars cut and bent?

A. 104. I do not.

X-Q. 105. Have you no sufficient recollection that would enable you to make an approximation to it?

A. 105. As stated, the only way that I could approximate it of having been made before the 4th of November, was because Mr. Goehler showed me no cut until after this safe was finished.

X-Q. 106. Then you have neither an independent nor relative recollection as to whether the safe was commenced before the 1st of October or not.

A. 106. I can base my recollection on having made a contract with H. H. Warner, on October 29, 1881, and that I returned home on the 1st or 2nd of November, and am positive that the safe was constructed then.

X-Q. 107. But would you not say, from the length of time required to bring a safe, that it was commenced subsequently to the first day of October?

A. 107. Yes, sir.

X-Q. 108. Did you exhibit "Exhibit Moses Mosler, No. 5," or a sketch or a cut that would represent it to Max and Julius Mosler? If you did, state how early you did to each.

A. 108. In order to show them what I contemplated doing, I suppose I did, but the time or times I showed it to them, I can not say, as I kept no record, but I am positive it was previous to the time that I first called upon my patent attorney.

X-Q. 109. In the first clause of your last answer, you say, "I suppose I did;" and in the latter clause of your answer, you say you are "positive" that you exhibited it to them prior to a particular event that you named. Does the phrase "I suppose I did," express the same certainty, in your judgment, as the phrase "I am positive?"

A. 109. What I meant by suppose is, that I can not now positively recollect whether I showed them the corner bent in its proper shape, or whether I simply showed them the shape of the cut. The phrase "I suppose," does not, in my judgment, express the same as "I am positive;" for when I said in the last answer, that I was positive I showed it to them, I meant regardless of the manner.

X-Q. 110. Did you ever exhibit a sketch or cut similar to "Hemler Exhibit No. 1," to any one? If so, to whom, and when?

A. 110. I think I exhibited "Hemler Exhibit No. 1," during the first conversation that I had with Mr. Hemler on the subject of bending cut angle bars cold. I did it in order to illustrate to him that what I meant, was in order to avoid all blacksmith work; that I did not want the cut out parts to lap over each other, but to cut sufficient away so that the cut out part would meet, and form a round corner without overlapping. I think it was during the first instructions I gave Mr. Hemler immediately on my return from Europe.

X-Q. 111. Were any experiments made in iron, for the purpose of ascertaining whether an angle bar cut and bent like "Hemler Exhibit No. 1," would be practicable?

A. 111. I do not know whether Mr. Hemler made any such experiments, but, looking at it in a theoretical view, I hardly think that such experiments were necessary, as it is at once perceptible that the iron would not close at the corners, nor will the cut without cutting away from the upper web, make a proper round corner.

X-Q. 112. If it is at once about perceptible that "Hemler Exhibit No. 1" would not be operative as you say, why did you show it to Mr. Hemler for the purpose of illustrating a practicle mode, as you have in substance said in answer 110.

A. 112. I did not exhibit it to him as a practical mode, but simply made the cuts similar to that of which we were making the round cornered express boxes; in fact, I might as well have taken a piece of blank paper without cutting or marking it, use it to illustrate what I desired, besides looking at a welded round corner, I think any good mechanic, without specific instruction, as to how to proceed after I gave my instructions, as to the form of the corner I desire, and that I want a cut so that when the angle is bent cold it will not overlap, but meet at the cut away portion, would at once know what to do. And, as Mr. Hemler is considered a good mechanic, specific instructions were hardly necessary.

X-Q. 113. Do you know when the models "Hemler Exhibit No. 2," round corner and unbent angle bar were made?

A. 113. I do not know when made, nor by whom.

X-Q. 114. You will please examine Exhibits, "Max Mosler, No. 2" and "Julius Mosler, Sketches Nos. 1 and 2," and state whether you ever gave your ideas as to the mode of making a round cornered safe to those gentlemen, respectively, by means of exhibits of which these

would by copies. If you did, state when you exhibited each of the sketches, and to whom?

A. 114. I am unable now to recollect exactly what cuts I did show then, as I paid no special attention.

X-Q. 115. Wasn't it your habit to make regular reports to the other stockholders, Max and Julius Mosler, of the progress of the invention during the time of its incubation, from the time of your return from Europe, until the 1st of November, and did you not exhibit sketches and cuts to them at these various meetings, showing the progress that you were making? And you may refer to the various exhibits to illustrate the report you made from time to time.

A. 115. It was my habit to speak to them from time to time, on this subject, but I can't say that it was my habit to exhibit to them sketches or cuts, from time to time, as the matter was left entirely in my care, and all the instructions I gave were to our superintendent, Mr. Hemler, to whom I always gave instructions, whenever I desire anything new or special made.

X-Q. 116. Then it was not your habit to have meetings of the stockholders, regular or irregular, formal or informal, at the residence of either, for the purpose of reporting progress or talking over this invention, was it?

A. 116. I can not say that it was the regular habit of the stockholders to have special meetings, simply to ascertain the progress of the round cornered safe; however, the matter was frequently discussed at the stockholders' meetings. It was not necessary to make any reports from time to time, as the matter was left entirely to me, after they had authorized me to get up this safe for our future safe.

X-Q. 117. What was the subject of these general conversations; that is, were they upon mechanical or business topics; that is, was the subject of such conversations the mode of constructing such a safe, or was it the desirability in a commercial sense, and the profit or loss likely to arise in the manufacture of such a safe?

A. 117. They were upon both mechanical and business topics, as far as the mechanical portion is concerned. I generally spoke of the progress in the iron department, as that department was entirely in my charge. The business topics would, in a commercial sense, have reference to the mechanical, as it was freely discussed, as to in what manner a better and cheaper safe could be constructed, a number of informal meetings were had previous to the making of a contract with H. H.

Warner, for, if the construction of the safe now in controversy, had not been taken into consideration by us, we should not have been enabled to make a contract with Mr. Warner, as the rates of discounts that he demanded, were greater than we had ever sold our old style safes for.

X-Q. 118. Didn't your attorney, when you showed him your invention, as you say in September, say to you that he did not believe that it would be operative in practice, or words to that effect?

A. 118 He did not. We had no conversation upon that subject. He simply told me to go ahead and construct some safes, get the machinery and tools ready, as it might be possible that I might desire some change, or that the machinery and tools necessary for the construction of these safes would also be patentable, and the whole could be embodied in one patent; but when I showed him the machinery and tools after we had got them ready, he told me that, as Mr. Hemler had gotten up the machinery and tools, I could not have that embodied in one patent; besides, he did not think there was enough new invention in the machinery and tools to make it patentable.

X-Q. 119. But you are quite positive, are you not, that the reason your attorney gave you why you should not apply for a patent at that time, was, that the tools, when they would be devised, might be also incorporated into the same patent?

A. 119. I am.

X-Q. 120. I understand, then, the following to be the situation, that at some time during September you exhibited to your attorney, as your invention, cuts or sketches, or both, illustrative of what is now shown in "Moses Mosler No. 5"; that at some time prior to this, you had shown the same device to Michael Hemler; that your attorney advised you not to make the application at that time, nor until appropriate tools had been devised; that about that time, prior and subsequent thereto, meetings of the stockholders took place, at which the subject of discussion was the manufacture and sale of such a safe; but that, at those meetings you did not exhibit to the stockholders any cuts or sketches showing the progress of the invention, and that the desirability of hurrying up this safe, for the purpose, among others, of making a contract with Warner, was regularly discussed; that, notwithstanding all this, no safe was made embodying the invention, until Goehler exhibited to you the cut on the 4th of November, 1881, when it was ordered to be immediately reduced to practice; that you never saw an angle iron cut or bent which was intended to form a round corner by the close meeting of the

mitre joint, until one was cut on the 4th of November, under Goehler's supervision, at your request, except the safe which you say you saw after being filled either before or after you came from Rochester, and which, you say, had an angle bar like "Hemler Exhibit No. 2," and that, during all this time you did not speak to any one in the factory about the invention, except your brothers and Michael Hemler. If this be not correct, make it so and if you have any explanation to make for the delay, please make that explanation.

A. 120. In the first part of your question you are correct. That there were no special meetings held by the stock-holders to simply discuss the sale and manufacture of such a safe, but the conversation would sometimes turn to that subject. In reference to the cut exhibited to me on the 4th day of November, 1881, I can not say if that was the exact date it was presented to me; at any rate, I think it was the early part of November, as it was but a few days after my return from Rochester; and the reason that I instructed Mr. Goehler to reduce the cut to practice, was because the cut he had made was one I had not thought of; and, in fact, as it was cut sharp and straight in the upper cut instead of being somewhat rounded, as the one was that I had previously made, and looking at it theoretically, I did not think that by making a square cut there, that the corners, when bent, would close tightly. I therefore requested him to immediately prepare an angle, as I was desirous to see how the iron would act; so when he called me and I saw him bend the corner of an angle so that it would come tight together, I was greatly surprised to see how the iron would act, as I had given Mr. Hemler instructions after having seen the safe referred to, having angle irons like "Hemler Exhibit No. 2." I supposed that Mr. Goehler was acting under Mr. Hemler's instructions; in fact, I do not remember of having any special conversation with Mr. Goehler at the time he showed me the cut, but simply gave him the instructions to prepare an angle, as above stated. So, in order to ascertain whether Mr. Hemler had made that cut or not, as he always objected to any square cuts in the upper cut, on account of the preservation of the tools, and to make a tool in one piece, that would in one stroke produce the upper and lower cut. I believe it was the next day that I was conversing with Mr. Hemler in reference to the corner, and particularly requested to know, in as much as Mr. Goehler had shown me the cut, whether he had made it or not, and I believe his reply was to the effect that that was a necessary cut, and could not be otherwise; and, as I could get

but little satisfaction from Mr. Hemler, I made up my mind that he did not care, or did not seem to think it worth while to assume the credit or give anybody else the credit of having rendered any assistance. As Mr. Goehler showed me the cut, I took it for granted that he had experimented, and did not know whether his experimenting amounted to invention or not; besides, in taking out the patent, I did not wish to swear too broadly, for, if Mr. Goehler had any claim in the matter, I wanted him to join me in the taking out of the patent. I also explained this to Mr. Goehler, and told him that he should hold himself in readiness, as I may want to have him go with me to my patent attorney, to sign the patent with me; but, upon consulting my patent attorney, and explaining to him what Mr. Goehler had done, or what I supposed he had done, he told me that Mr. Goehler was no more a party to the invention than he, my patent attorney himself was, but if I wanted to take the patent out jointly, I could do so. But, under the circumstances, as he considered me the sole inventor, the patent, if taken out jointly, he did not consider would be a valid one, so I informed Mr. Goehler that his presence at the patent attorney's would not be necessary. During the time, or rather previous to the time the safe referred to was filled, I do not think that I spoke to any one else about my invention, besides my brothers and Michael Hemler, for, whenever I make an invention, I make it a point to speak of it to no one except those directly interested, or the party to whom I give specific instructions as to the carrying out and production of my invention. One of the main reasons that these safes were not constructed sooner, was, that we were, during the time that this safe was in view, constructing and about introducing a safe of eight flanges, having patent octagon corners, with wedge-proof socket bolts, for which a patent had been issued to me in March 22, 1881, which was during my absence in Europe. Regardless of the introduction of this safe, it would take three or four months for us to make such a decided, or even less, a change from the square to round cornered safes, on account of constantly having a considerable amount of prepared material for the class of safes in construction, so that it is not advisable for us to at once construct a new style of safe, especially when the material, previously prepared, can not be used in the new safe. In making changes, we do not advertise any such change, but simply get the new article out as quickly as it is consistent with the prepared material on hand, as it is customary to ship these new safes right out on orders, without notifica-

tion to purchasers, as they are always willing to receive a better and improved article than what they may have purchased, especially when the safe was larger.

Adjourned till 2 P. M. January 9, 1883.

2 P. M. January 9, 1883, met pursuant to adjournment. Present same parties.

X-Q. 121. Can you point to any difference between the cut that Goehler exhibited to you on the 4th of November, and "Moses Mosler Exhibit No. 5?" If you can, point out the difference, specifically, with reference to "Moses Mosler Exhibit No. 5."

A. 121. The difference is that "Moses Mosler Exhibit No. 5" shows the upper cut somewhat rounded, and the Goehler upper cut is straight.

X-Q. 122. Wouldn't an angle bar, cut and bent like "Moses Mosler Exhibit No. 5," make as perfect a joint as the cut that Goehler exhibited to you?

A. 122. Looking at it theoretically, it would.

X-Q. 123. Well, wouldn't it practically?

A. 123. As I have not tried it myself in iron, I can not say whether it will or not.

X-Q. 124. In answer to 120 you say, "I also explained this to Mr. Goehler, and told him that he should hold himself in readiness," etc. The matter referred to that you explained to Mr. Goehler, as I understand it, is the preceding sentence, vid: "As Mr. Goehler showed me the cut, I took it for granted, and did not know whether his experimenting amounted to invention or not," etc. Do I understand that you explained this latter matter to Mr. Goehler in your conversation with him in December, when you told him to hold himself in readiness, etc? If you made such explanation, please state what Mr. Goehler's reply was.

A. 124. As there was no other patent that I was going to take out, I certainly must have fully explained it to him; can not give his exact reply, only in substance, that he was ready to go with me whenever I so desired it.

X-Q. 125. I understand you to say that you can not produce or give any definite information as to where that safe now is, that you saw about or slightly before the first of November, 1881, and which you say was built upon angle bars like "Hemler Exhibit No. 2." Is this right?

A. 125. I have tried to trace it, but have failed to do so. That safe was made for stock. We can not now determine that it was shipped out at once, or remained in stock, which is likely to occur in safes made for stock, that they may remain on hand for some time.

X-Q. 126. That was a No. 5 safe, was it not?

A. 126. It was.

X-Q. 127. What is the purpose in putting on the pieces of malleable iron, that you now line the inside of the bent angle with; is it simply to strengthen, or is it to prevent the cement from exuding through the joint?

A. 127. The manner in which that piece suggested itself to me, was because Mr. Hemler contended that if the iron were bent cold it might spring some, besides I wanted something in the corner to prevent the cement from eating through, so, in order to obviate the above, I suggested that the malleable piece be put in the corner. And, as it was necessary to fasten it in, we found it a good thing for strengthening the corners.

X-Q. 128. Well, then, as I understand you, such corner pieces are necessary to prevent the cement eating through among other reasons. Am I right?

A. 128. I have paid no especial attention to that, so I can not answer you fully.

X-Q. 129. But, as a matter of fact, you have put in such malleable pieces in all safes made by your concern, which embodied the invention here in dispute. Is that right?

A. 129. To the best of my knowledge, yes.

X-Q. 130. Are those lining corner pieces so formed as to fit neatly into the curve of the bent angle bar?

A. 130. They are supposed to be.

X-Q. 131. Well, suppose such a corner piece to be placed inside of an angle bar, cut and bent like "Hemler Exhibit No. 2," would it not make just as good a safe in every way, as would a safe built upon angle bars, such as the cut exhibited to you by Goehler, or shown in your application for patent?

A. 131. If an angle bar be bent in accordance with "Hemler Exhibit No. 2," and closed as tightly in the corner as that as shown in my application, a proper corner piece would answer the same purpose, but if the upper holes were not closed tightly, the cement will surely work its way under the corner piece and out of the opening.

X-Q. 132. Did you know that when you saw that safe built upon angle bars, like "Hemler Exhibit No. 2," at or just prior to November 1, 1881?

A. 132. I certainly did.

X-Q. 133. Well, if you knew at that time that that made just as good a safe as the cut that Goehler showed you, why did you display so much anxiety about the latter cut, and adapt your manufacture to it, as well as apply for a patent for it?

A. 133. I will even now say, if a bar be made and bent in accordance with "Hemler Exhibit No. 2," to fit up closely in the corners, that it is as good, or even better, than the cut that we are now using. I displayed no anxiety as regards to the cut being anything new, but the only anxiety I did display, was to see the angle close tightly with that cut, while looking at it theoretically, any one will think a round cut necessary. We are not now making angles in strict accordance with my application, as I think my application calls for a rounded cut in the upper cut and sharp corners, while we are now using a straight cut in the upper cut, and rounded corners in the upper cut, and not a sharp cut in the corners. Mr. Hemler did try the experiment of punching the upper and lower cut in one piece, having the corners in the upper cut pointed. He only punched a few angle bars with his punch before it broke, and after that concluded that each cut, the upper and the lower, must be punched separately, and that the corners in the upper cut must be rounded, instead of sharp.

X-Q. 134. At the time that you exhibited the paper "Mosler Exhibit A," to Goehler, what conversation took place with reference to his taking the paper to show it to a lawyer?

A. 134. I do not remember any conversation to that effect; yet I may have offered it to him so that he could take it to a lawyer if he chose to do so.

X-Q. 135. Didn't he, at that time, or subsequently, and before he signed it, ask for possession of the paper, in order to take it to a lawyer, and didn't you refuse him the use of the paper for that purpose?

A. 135. No, sir, not to my knowledge. For, if such were the case, he certainly would have had possession of that paper, as I never go back on my word.

X-Q. 136. Do I understand you to swear positively that the above request was not made and refused? or, do you mean that you have no recollection of such an occurrence? or, do you mean that this request

and refusal did not occur because you never go back on your word?

A. 136. I do not alone make the reply I did, from the fact, that I never go back on my word, but I do not recollect any such request, and, if such a request was made of me, it was made in the presence of Mr. Julius Mosler and Michael Hemler, as I had no personal conversation aside from this with Mr. Goehler in reference to the paper, except in the evening when he came aud asked for it of his own accord, and I simply said it was immaterial to me whether he signed it or not.

X-Q. 137. I can understand, from what you have stated about Goehler's showing you the cut in question, and bending the angle bar, and Michael Hemler declining to take the credit of it, why you should desire Goehler to sign a paper such as "Mosler Exhibit A," but I do not understand why you should request Hemler to sign that paper for the reason above stated, and for the further reason that it has no where appeared in the record that Michael Hemler did aught toward the invention with the exception of your statement that you showed him your conception or conceptions, and told him what you wanted done. Hence I ask, why you ask Michael Hemler to join with Goehler in signing the paper.

Objection. Objected to by Mr. Murray, as having been fully answered.

A. 137. I do not wish to argue with you as to whether it appears upon the record or not what Mr. Hemler did as to the completion of my invention, but as all my instructions were to Mr. Hemler, and his to his subordinates, I supposed that if Mr. Hemler was to leave our employ, he might also make a similar claim as the one Mr. Goehler did to Mosler, Bahmann & Co. Besides, Mr. Hemler had informed me previous to the writing of this paper that Mosler, Bahmann & Co. had tried to induce him to leave our employ.

X-Q. 138. Can you state when and where such request was made to Mr. Hemler, and what stockholder, officer or agent of Mosler, Bahmann & Co.'s, asked Mr. Hemler to leave your employ?

A. 138. I can not state just when and where it was, as I was not present, but Mr. Hemler told me about the time that Mr. Goehler first notified me of his intention of leaving our employ, and going with Mosler, Bahmann & Co., or some machine shop, that Mr. Bahmann Sr. and, I believe, president at that time of Mosler, Bahmann & Co., had spoken to him three or four weeks before in reference to his accepting

a position with them. I suppose Mr. Hemler could be able to substantiate the statement he made to me.

X-Q. 139. In answer 70, I understand you to disclaim any reference in the Warner, or other contracts entered into prior to November 1, 1881, to round cornered safes by name, but I further understand you to insist that the prices fixed in the Warner, if not in the other contracts for safes, was such, that you must have intended to fill those contracts with round cornered safes, as the cost of the square cornered ones was such that you could not have made that contract, had you not then been familiar, not only with round cornered safes made in accordance with the invention here in dispute, but that you also knew that such round cornered safes could be made at prices that would justify you in making that contract or contracts. If you still persist in this statement, then I request that you place that contract or contracts in the hands of the officer, so that he may state of record, the terms of these contracts, in so far as they may be important to determine the prices, at which you agreed to sell those safes.

Objection. The witness is instructed by Murray, to ask the permission of the Mosler Safe & Lock Company, if he thinks it desirable, before complying with the request, as it does not appear that he has control over contracts and papers of the Mosler Safe and Lock Company.

A. 139. Even though the Mosler Safe & Lock Company were to grant me permission to have that contract brought here, and a record made of the prices therein contained, I, as president of the Mosler Safe & Lock Company, having the interests of my Company in view, would not permit any such unjust demand to be fulfilled, as the publication of such matters might prove more serious than the loss of this case. Furthermore, I have previously stated, that if the counsel for Mr. Goehler would step down to the office of the Company; I would cheerfully let him examine the contract or contracts in question, or any book that he may think necessary or useful in this case. All I exacted of him, not under oath, but as a man of honor, was not to divulge anything but that pertaining directly to this case, and I hope that the counsel will not insist upon his demand just made.

Counsel for Goehler desires to say, to relieve the evident misapprehension of the witness in reference to the previous question, that his

purpose in asking for the statement upon the record of the matter asked was that he, counsel for Goehler, might, in rebuttal, take the testimony of witnesses skilled in the manufacture and sale of safes, to show whether the inference which the witness says is deducible from the prices named in that contract, is a legitimate inference. Counsel says that he has no such knowledge of the manufacture as would enable him to form any opinion whatever, and that, unless the matter referred to could be spread upon the record, it would be impossible to weigh the value of the inference which the witness has drawn, or desires others to draw from his statement. Counsel has no desire to insist upon the spreading of this matter upon the record. His purpose in the matter is to advise the witness that no such inference as he has suggested can be drawn from his statement of these papers, unless he desires so to spread the basis of this inference upon the record, so that issue may be taken upon the facts.

A. 139. Although I should be obliged to hazard my case on this special point, I will not permit the prices and so forth contained in that contract to be spread upon this testimony, not alone on account of not wishing our competitors not to know at what rates we are selling safes to our agents, but at the same time protect the interests of our agents, as a matter of this kind, being in print, would soon become known amongst the merchants generally. If, as the counsel says, that at the rebuttal, he will subpœna experts as to the cost of constructing our present safe, and that of a square corner, made in the ordinary manner, he will then gain all the information he desires.

X-Q. 140. Did you, upon the day that you informed Goehler that you would not require his presence at the attorney's office, say to him that you were the inventor of the round cornered safe, made with the bent angle bar now in dispute? If you did, please state your language, precisely, and what, if anything, he said in reply.

A. 140. I do not remember whether I did or did not.

MOSES MOSLER.

STATE OF OHIO,
HAMILTON COUNTY. } ss.

I, Alfred B. Benedict, a notary public, in and for the county of Hamilton, and State of Ohio, do hereby certify that the foregoing depositions of Charles J. Graeser, Max Mosler, Julius Mosler, John T. Moellers, Michael Hemler, Edward C. Reemelin and Moses Mosler, were taken on behalf of Moses Mosler, pursuant to the annexed notice, at the time and place therein named; that the said witnesses were by me duly sworn before the commencement of their testimony, to testify the truth, the whole truth and nothing but the truth; that the testimony of all of said witnesses was written off by me; and by them subscribed in my presence; that the opposite party was present by himself and by his attorney, James Moore, Esq., during the taking of said testimony; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at Cincinnati, in said County and State, this 10th day of January, A. D. 1883.

ALFRED B. BENEDICT,
Notary Public, Hamilton County, Ohio.

By request of parties it is ordered that these depositions be taken by question and answer.

CHARLES RIPPL, a witness produced on behalf of the defendant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by JAMES MOORE, of counsel for the defendant, as follows:

358 Question 1. State your name, age, residence, and occupation.

Answer. My name is Chas. Rippl. I am 43 years of age; reside in Cincinnati, Ohio, and am by occupation a locksmith. I am foreman for Mosler, Bahmann & Co.

Counsel for respondent here offers in evidence original letters patent No. 268,010, granted George J. H. Goehler, assignor, November 28th, 1882, for improvements in bending angle irons, and marks the same "Respondent's Exhibit Goehler Patent No. 1."

Also original letters patent No. 268,011, granted said George J. H. Goehler, assignor, November 28th, 1882, for improvements in bending angle irons, and marks the same "Respondent's Exhibit Goehler Patent No. 2."

Also certified copy of the English letters patent granted Thomas Skidmore April 7th, 1865, No. 1000, for improvements in the construction of safes or receptacles for securing and protecting valuable property, and marks the same Respondent's Exhibit Skidmore English Patent.

359 Q. 2. Were you in the employ of Mosler, Bahmann & Co. when they commenced to make safes with round corners upon bent angle bars?

Ans. Yes, sir.

Q. 3. While making these safes and before they commenced to weld them at the corners were the bars bent hot or cold?

A's. Hot.

Q. 4. Were any safes made upon angle bars bent cold; and, if not, why not?

Objected to as immaterial.

Ans. I believe we tried it, but we found out that it would not work, and we bent them hot.

Q. 5. Why wouldn't it work; what do you mean?

Same objection.

360 Ans. We could not bring them square and there was always some spring in them that made trouble in completing them.

Q. 6. Well, would the iron bend cold without cracking, or what is the fact in relation to that?

Ans. It breaks always when you bend it cold.

GUSTAN R. WERNER, being at this point introduced to interpret the testimony of the witness, and being duly sworn to correctly and

truthfully interpret the questions given to said witness and his answers thereto, deposes and says as follows:

Q. to the interpreter, said Werner: Have you any interest in this cause or are you related to any of the parties thereto?

Ans. No, sir.

Q. 7th to witness Rippl: You will please state whether you have examined the "Respondent's Exhibit Skidmore English Pat-
361 ent" and whether you understand the same.

Ans. Yes, sir.

Q. 8. You will please examine model shown you (and which is herewith offered in evidence, to be marked "Skidmore Model") and state what it represents and who made it.

Ans. I have examined said model; it represents one corner of Fig. 2 of the Skidmore patent, omitting two pieces of steel, shown in the drawing without casting; one of the workmen in my employ made the model.

Q. 9. Was this interior round angle bent of hot or cold metal?

Ans. Hot metal.

Q. 10. Could any skilled safe-maker from an examination of the Skidmore patent make the model, including the cutting and bending of the round corner?

362 Objected to as incompetent and because the Skidmore patent does not describe the round corner.

Ans. Yes, sir.

Q. 11. You will please explain, with reference to the models before you, the process at present in use at the shops of Mosler, Bahmann & Co. for securing the angle in round-cornered safes.

Objected to as it does not appear that the said process was in use prior to the bringing of this suit.

Ans. It is first cut out as shown in model No. 1; then it is cut off as exhibited in model No. 2; 3rd, the iron is heated and then bent as exhibited in model No. 3; the last is the iron is then welded as in Exhibit No. 4.

Said models are herewith marked "Models of Welded Round Corners Nos. 1, 2, 3, and 4," respectively.

Q. 12. Can you state the reason why Mosler, Bahmann & Co. commenced to weld their round corners and ceased to
363 manufacture round-cornered safes without welded hoops?

Objected to as immaterial and incompetent.

Ans. 1st, it is better and more solid work. The hoops that are riveted together, they show a seam when the cement has become hardened into stone. The safe will then appear as if it were an old safe liable to fall apart—tumble into pieces. It looks bad; the paint cracks. To prevent that we have undertaken to make the welded corners.

Q. 13. Who first suggested that the company had better weld these corners, and what was the occasion or experience that induced this suggestion?

Objected to as immaterial and incompetent.

Ans. Mr. Naeher first came and said it looked like a bad job; that when the cement would be put in it would cause a seam and
364 cause the rivets to project; that is the reason he was for the welding of the corners. Afterwards he found out that in several safes the work turned out just as Mr. Naeher said.

Q. 14. Is there any difference in the economy of manufacture between those that are welded and those that are riveted, and which is the cheaper, if either?

Same objection.

Ans. There is a difference; the welded one is the cheaper.

Q. 15. What is the character of work employed upon the unwelded ones which make them cost more than the welded ones?

Same objection.

Ans. It took four pieces of iron for four corners, sixteen rivets in the corners, and eight underneath, with a piece of angle iron about eight inches long. In putting the hoops together we
365 were put to great expense; if the angle was not square the rivets would fly out; that is all. In order to make a perfect angle we would be put to great trouble with the rivets, which would fly out and would have to be replaced with new ones; that is what made the hoops dearer than the solid welding.

Q. 16. Can you state the date at which you ceased to manufacture safes with the joints of the hoops riveted and when you commenced to weld all the hoops?

Ans. I cannot give the exact date unless I refer to my work books.

Q. 17. Could you, by referring to your affidavit made in this case, so refresh your memory as to then state the date referred to?

Ans. Yes, sir.

Q. 18. You are herewith shown said affidavit.

Ans. August first, 1883, is the date.

366 Cross-examination by GEORGE J. MURRAY, counsel for complainant:

X Q. 19. You are still a stockholder in the Mosler & Bahmann Co., are you not, and a director of said company?

Ans. Yes, sir.

X Q. 20. Were you formerly superintendant of said company?

Ans. I was foreman, I believe; I was for five months superintendant; I had charge of the business.

X Q. 21. During what time was that?

Ans. I was superintendant from about January, 1883, till about June, I think.

X Q. 22. Who was superintendant of the company from January, 1882, up to Jan., 1883—I mean of the mechanical department?

Ans. I was myself. I was not elected by the board of the
367 company. We had a manager. I had charge of the iron department as first foreman, and hired my own hands, and received my orders from Mr. Bahmann and Mr. Hintz, our manager.

X Q. 23. Who has had charge of the mechanical department since June, 1883?

Ans. Mr. Frederick Naeher.

X Q. 24. Are the safes you have been making since August, 1883, the same as those you made from the spring of 1882 up to that time, with the exception of the difference in the round corner you have described in your previous testimony?

Ans. In 1882 safes were yet made with the patent punch on which Mosler, Bahmann & Co. had a patent. From August, 1883, all safes were made on the welded system, and old incompleted work on hand was finished in the old style; that is all.

X Q. 25. When you refer to the old style you mean like that shown in the Goehler patent, No. 268,010?

368 Ans. Yes, sir.

X Q. 26. And that is that patent punch you refer to, is it?

Ans. Yes, sir.

X Q. 27. State about when the last safes were made upon angle bars cut out and bent similar to those shown in the said Goehler patent, No. 268,010.

Ans. That is hard to say. The hoops sometimes stand in the shop for a good while and are not used up. Sometimes this safe sells better than the other, and then the old one stands there. I mean by that a differences in the sizes; one size will sell better at times than the other; that is why they stand so long in the shop. I have told you that since August, 1883, we have cut out none according to this patent punch referred to in the question.

X Q. 28. But you have made safes upon angle bars that were cut out and bent before August, 1883, have you not?

369 Ans. Yes, sir.

X Q. 29. And you still make such safes occasionally, do you not?

Ans. Our new work that we make is not that way any more, I could not say whether we have any of the old punch work in our shops at present. I hardly think there are any more left. I could not say exactly, because I did not inform myself exactly about the matter. If I had known I would have looked.

X Q. 30. Have you made any of the old square-cornered safes, such as you made prior to 1882, since you commenced making the round-cornered safes, such as you made after Mr. Goehler entered your employ, in the spring of 1882?

Ans. That depends on the order. When an order comes we make square-cornered ones.

X Q. 31. But you do not make them regularly in your business and only upon special orders?

370 Ans. Only upon special order.

X Q. 32. And the only difference between round-cornered safes you are making from the spring of 1882 up to August, 1883, and the safes that you have been making since that time is that in those made prior to 1883 the angle bars were cut out and bent, as shown in the Goehler patent, 268,010, and those you have made since August, 1883, had the angle bars cut and welded as shown in the Exhibits "Welded Round Corners," Nos. 1, 2, 3, and 4. Is that right?

Ans. I have made the hoops like this (referring to Fig. 4 of the drawing of Goehler patent, No. 268,010), and then I welded some with a different punch from that shown in said Fig. 4. In 1882 I made some round-cornered safes, as shown in said Fig. 4, and

371 in 1883 also, and some that were welded, but with a different punch; that is all.

X Q. 33. But, aside from the difference in the construction and formation of the corners, the safes that you have made since August, 1883, are substantially the same as those you made in the spring of 1883 and fall of 1882, are they not?

372 Ans. The safe is the same as another. The hoop is a hoop; they are the same and look the same; the difference is that one is welded and the other is riveted; the shape, aside from the construction, is the same.

Re-examination:

R. Q. 33½. Is there any difference between the safe that Mr. Hintz brought home from St. Louis and the safes that you made before August, 1883, except the difference shown in the patent No. 268,010?

Ans. Well, as to the appearance of the safe, if you put both safes alongside of each other they will look like a pair of brothers or sisters.

Said safe, referred to and more particularly described in the affidavits of Theodore Wreslanck, Ludwig Beer, and Charles Boerecker, on file in this cause, is herewith offered in evidence as "Respondent's Exhibit St. Louis Round-Cornered Safe."

373 Recross-examination:

R. X Q. 34. Has the said safe, Respondent's Exhibit St. Louis Round-Cornered Safe, round-cornered angle-bar frames like those shown in the Goehler patent, No. 268,010, or like the welded corners in Exhibits Welded Round Corner No. 1, 2, 3, and 4, or is it made with flat bar frames in front and a flat hoop bent around the round-cornered frame like the old safes your company made previous to the time Goehler went into your employ, except that in the old safe the hoop was bent with an angular corner instead of being bent with a round corner?

Ans. I have not examined the St. Louis safe particularly to be able to tell how it is put together; I must open the safe and take it apart in order to be able to tell what is beneath, whether angle bars or bar iron or frame; that is all.

R. X Q. 35. Can't you tell from looking at the front of the safe that it is not made of angle bars but of flat bar iron?

374 Ans. That is hard to tell; that is about as much as to ask on placing the outside of this model, Skidmore patent, before you and asking you to state if that is angle iron inside; just as hard will it be for me to state that in reference to the St. Louis safe.

R. X Q. 36. I did not ask you what was inside the St. Louis safe; I simply asked you whether the front of that safe is not made of flat iron bars with a flat hoop bent around the front frame. Can you state whether it is or is not so made?

Ans. I could not tell that, whether there was bar iron or not; I simply saw a round-cornered safe, and would have to examine it in order to answer the question.

R. X Q. 37. And you have not examined it?

Ans. Not particularly.

C. RIPPL.

Respondent here offers in evidence printed copy from the
375 Patent Office of the letters patent No. 3814, granted to W. McFarland January 11, 1870, for design for safes, and makes the same "Respondent's Exhibit McFarland Design Patent."

Adjourned till 2 o'clock p. m., Tuesday, June 17th, 1884.

JERE. F. TWOBIG,
Notary & Act. Sp'c'l Ex.

TUESDAY, *June 17th*, 1884—2 p. m.

Parties met pursuant to above adjournment.

Same counsel present as before; also at the same time and place.

JULIUS C. HINTZ, a witness produced on behalf of respondent, being first duly sworn, deposes and says as follows:

Q. 1. Please state your name, age, residence, and occupation.

Ans. My name is Julius C. Hintz; I am 43 years old; reside in Cincinnati, Ohio, and by occupation I am manager of Mosler & Bahmann's business.

376 Q. 2. State how and when you were employed during the year 1881, and especially during the last three months of that year.

Ans. I was with the Mosler Safe & Lock Co. as book-keeper and correspondent.

Q. 3. Are you familiar with the character of safe known as the "round-cornered" safe that the Mosler Safe & Lock Co. commenced to manufacture during the latter part of the year 1881?

Ans. I am and was at that time.

Q. 4. Did you about that time have any conversation with Moses Mosler as to who had invented, devised, or got up the round-cornered angle bar used in that safe? If you did, state when and where such conversation took place, as nearly as you can; what inducement or incident led to the conversation, and state it, the conversation, fully.

Objected to because calling for evidence touching the originality or priority of the invention or inventions herein involved,
377 these questions having been decided in favor of Mosler in an interference proceeding in the Patent Office between the same parties, which decision has been acquiesced in by the defendants herein, and all evidence touching the originality or priority of this invention as between Mosler and any one connected with the defendant being, therefore, *res adjudicata.*

Ans. There has been some talk among the men in the office about an angle iron to be used for round-cornered safes, and I asked Moses Mosler, who was the one that originated the mode or manner of making that angle, whether it was Mr. Hemler or Mr. Goehler. He said *the* he didn't know and he didn't care, as long as he had it. The time of this conversation was about six weeks before I left there; that was about two weeks before Christmas, during that year; it may have been three weeks; I cannot tell.

Cross-examination by GEORGE J. MURRAY, counsel for complainant:

378 X Q. 5. How long have you been manager for the Mosler, Bahmann & Co.?

Ans. I commenced about the 18th of January, 1882.

X Q. 6. You are the same J. C. Hintz whose name is signed to the application of G. J. H. Goehler as a witness, which application was in interference with the application of Moses Mosler for the invention for which the patent here in suit was granted, are you not?

Ans. Yes; I believe I signed his application as a witness.

X Q. 7. You were superintendent for the Mosler, Bahmann Co. at the time the interference was pending and had frequent conversations and consultations with the present attorney of Mosler, Bahmann & Co., who was also their attorney in the interference proceedings, have you not?

Ans. Yes, sir.

X Q. 8. Did you relate the conversation you have just re-
379 lated to the attorney of Mosler, Bahmann & Co. while the interference proceedings were pending?

A. Yes, sir.

J. C. HINTZ.

Adjourned by consent till Monday, the 23d inst., at 10 a. m.

JERE F. TWOBIG,
Notary & Acting Sp'c'l Ex.

JUNE 23, 1884—10 a. m.

Met pursuant to above-noted adjournment.

Same counsel present as before; and by consent the examination is adjourned till 10 o'clock a. m. Tuesday, June 24, 1884.

JUNE 24, 1884—10 a. m.

Met pursuant to last-noted adjournment.

Present: Same counsel as on yesterday.

JOHN HURST, a witness produced on behalf of respondent, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by James Moore, Esq., counsel for respondent, as follows, to wit:

Q. 1. Please state your name, age, residence, and occupation.

380 Ans. My name is John Hurst; I am 31 years old; I reside in Cincinnati, Ohio, and by occupation I am a safe-maker; I did live at 45½ Jones street, but am now living at 99 Central Ave., in said city.

Q. 2. State when, if ever, you worked at Hall's Safe & Lock Co.

Ans. I started there about 1865, and worked there probably three or four years; then I started for Mosler & Bahmann and worked for them a short time; from there I went back to Hall's again; the Halls I left and started to work for Mosler Bros.; after that I worked about six months in a tannery; then started in Mosler Bros., again; from there I started with the Cincinnati Safe & Lock Co., and since then I am working for Mosler, Bahmann & Co.—about three years, I suppose, or somewhere about that.

Q. 3. When did you leave the Hall Safe and Lock Co. last, and how long did you work at that concern at that time?

381 Ans. About six years ago I left them, but can't be very particular about it; I worked there probably a year at the last period.

Q. 4. State whether you were familiar with fire-proof safes made upon angle bars and filled from the bottom prior to the year 1880. If you were, state when they were made and how the corners were made—whether welded or otherwise.

Ans. I was familiar with fire-proof safes made upon angle bars and filled from the bottom prior to the year 1880; they were made in Hall's and the corners were welded solid.

Q. 5. Please examine model "Respondent's Exhibit A" attached to deposition of Chas. Rippl and John Hurst and state how the mode there shown of attaching the bottom agrees with or differs from the mode in which the bottoms were attached to the safes that you say were made at Hall's before 1880.

Ans. It's the very same thing.

382 Q. 6. Were the corners of those safes round or square?

Ans. They were square.

Q. 7. Please state how the angle bar was cut, if cut at all, and you may refer to "Respondent's Exhibit Welded Round Corner No. 2," if it will aid your explanation.

Objected to as leading and suggestive of the answer desired.

Ans. It was cut first like the "Exhibit Welded Round Corner No. 2;" maybe a little further in; that's all the difference.

Q. 8. When such a corner was first bent was it round or square?

Ans. It was round.

Q. 9. Did you afterwards do anything to make the angle sharp or square; if so, what?

Ans. We staved it up and had to sharpen the corners on both sides.

383 Q. 10. Will you please explain so that a man not a mechanic will understand what you mean by "staving up" the corners?

Ans. When this is bent (Respondent's Exhibit Round Corner No. 2) it is round upon the outside; it is then heated and hammered upon both sides of the corner to make it square; that refers to safes made by Hall prior to 1880.

Q. 11. Was this heating and hammering done before it was welded, or at the same time?

Ans. It was done afterwards.

Q. 12. How did the angle, so far as the joint was concerned, and without reference to the round corner, compare with the Exhibit "Welded Round Corner No. 4?"

Ans. It's all the same; the joint is exactly the same, except the round corner.

Q. 13. At the time that these safes were being made at Hall's were there any express boxes made there? If so, describe how

384 those express boxes were made—that is, whether made upon angle bars, how such angle bars were cut, if at all, for the corners, whether they were welded, and what kind of corner, round or square, did they have.

Ans. They were made there of angle bars; the corners were cut and welded solid; they were round corners.

Q. 14. Was there any difference in the making of these angle bars, including the cutting and welding of the corners, other than that the one had round corners when finished, and the others angular corners? If there was any such difference, please describe it.

Ans. There was no difference, with the exception of the corner and size; those express safes were very small so as to be handed.

Q. 15. State what was the reason, if there was any, other than fashion, why the fire-proof safe corners were staved up to make them angular or square, while the express boxes were permitted to be sent out with round corners.

385 Ans. On the express safes there was a sheet of iron out of one piece put on the inside, and the frames upon the outside. The fire-proof safes were panel safes, made out of pieces; otherwise it was mostly fashion. There were some square express boxes made at the same time.

Q. 16. About how many of the fire-proof safes such as you have described, and of the express boxes, were made at Hall's before you left there about six years ago?

Ans. That is hard to tell; there were hundreds of them made; they were made right straight along, express boxes and safes.

Q. 17. Have you known such safes or safes filled from the bottom like "Exhibit A" made at any other factory before 1880; if so, where and when?

Ans. The Cincinnati Safe & Lock Co. made them; they made no others at all; they were all filled from the bottom there. This was in 1878 or 1879.

386 Q. 18. Were those safes made by the Cincinnati Safe and Lock Co. made upon angle bars such as you have described?

Ans. They were made on angle bars, but not the solid bars; they were made of four pieces joined together at the corners.

Cross-examination by GEO. J. MURRAY, Esq., counsel for complainant:

X Q. 19. What branch of the safe business do you work at?

Ans. Outside boxes, box-making, but I worked at different work.

X Q. 20. What kind of work were you working at at Hall's at the time you say these square-cornered safes were made, and at the Cincinnati Safe and Lock Co., when you were working there in 1878 or 1879?

Ans. Box-making.

387 X Q. 21. Did you yourself make any of these square-cornered safes which you say were made upon angle bars and filled from the bottom?

Ans. I did.

X Q. 22. Who was foreman or superintendant at Hall's at the time you made these safes?

Ans. Tom McCormick was my foreman. I believe Mr. Corry was superintendent.

X Q. 23. Did you work at Hall's while Mr. Hember was foreman?

Ans. I did.

X Q. 24. Were any square-cornered safes made upon angle bars and filled from the bottom at that time?

Ans. Not to my knowledge.

X Q. 25. Can you state between what years you worked for the Hall's Safe & Lock Co.?

Ans. I can't tell exactly. I worked there some six or seven different times.

388 X Q. 26. You can't state any of the years, can you, when you worked there?

Ans. Yes; I guess I can. I worked there about 1868 and 1869; a couple of years steady at a time; also in 1874; I am sure of that; also in 1875 and 1876.

X Q. 27. At which of these times was it that these square-cornered safes upon angle bars were made?

Ans. We must have made them already about 1875 or 1876.

X Q. 28. What was the difference in the price of making these safes and the common square-cornered safes that were then made by the Hall's Safe & Lock Co.?

Objected to as immaterial.

Ans. I cannot judge of it. It is divided in so many different appartments

X Q. 29. Answer as to the part that you made.

389 Ans. Well, there was not much difference, if any. Most of the time I worked day work at it.

X Q. 30. Was there more or less work on the square-cornered angle-bar safe than there was on the safe the- commonly made?

Objected to as immaterial.

Ans. In some departments there was more work; in others there was less again.

X Q. 31. But, taken al*l*together, was there more or less?

Ans. I think there was less, taken al*l*together, on the angle-bar safes than there was on the others.

X Q. 31. Which was the stronger and better safe?

Ans. The angle-iron safe.

Re-examination:

R. Q. 32. Were they still making these angle-iron safes and round-cornered angle-iron express boxes the last time you left
390 the employ of the Hall Safe & Lock Co.?

Ans. The angle-iron safes they made right straight along; the express boxes they made only when they got orders for them; they did not keep them in stock.

R. Q. 33. State, if you know, whether they have ever ceased up to this time to make these safes and boxes.

Ans. They make them round-cornered now; that's what I hear; I have not been there lately.

Recross-examination:

R. X Q. 34. About what proportion of these safes made at Hall's Safe & Lock Co. while you were there were made upon these square angle bars?

Ans. About one to eight of the common safe.

JOHN HURST.

Adjourned, by consent, till Monday, the 30th of June, 1884, 10 a. m.

JERE. F. TWOBIG,
Notary & Act. Sp'c'l Ex.

391 JUNE 30TH, 1884—10 a. m.

Met pursuant to last-noted adjournment and, by consent, the examination is further adjourned till Monday, July 7th, 1884—10 a. m.

JULY 7TH, 1884—10 a. m.

Met pursuant to last-noted adjournment.

Same parties present as before.

MOSES MOSLER, a witness produced on behalf of the defendant, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by JAMES MOORE, Esq., counsel for defendant, as follows, to wit:

Q. 1. Are you the same Moses Mosler referred to in the bill of complaint herein as inventor?

Ans. I am.

Q. 2. How are the angle bars for your round-cornered safes, such as described in the various patents in this suit, bent at your factory, hot or cold?

392 Ans. Well, we are not using the same angle bars at present as the angle bar referred to—square-angled. We are using a round angle, which we term the "crescent angle." We are making a different cut for the use of the latter angle, which is bent hot. The former angle was bent both cold and hot.

Q. 3. How many or what proportion of the former angles were bent cold and used in safes?

Ans. I cannot give an estimate, as I was seldom present when the angles were bent.

Q. 4. Don't you know that at the very start of the prior manufacture that it was found impracticable to bend such angle bars without injuring them, except when hot, and that in your manufacture from the start the angle bars were heated before they were bent?

Ans. I do not, except in cases where we received an inferior quality of iron.

393 Q. 5. Can you state that any considerable number of such angle bars were ever bent cold, and then used in safes? If you can, state when any such number were bent, and the names of the workmen who bent them.

Ans. I cannot.

Q. 6. Then you don't know, of your own knowledge, that any were so bent cold and used in safes?

Ans. To the best of my knowledge, I am positive that at first they were bent cold.

Q. 7. You refer now, do you not, to those bent on the 4th of November, 1881, by Goehler, or do you mean that there was a continuous manufacture for any length of time of cold bent angle bars?

Ans. I do not refer to those bent by Goehler or any individual person at the time referred to, but to the continuous use, as I remember numerous complaints made to me about the iron
394 when bending cold whenever the iron was burnt, and called the attention of Mr. Williamson, of Mitchell, Trante & Co., to the fact.

Q. 8. Then, as I understand you, there was an effort for some time to bend these angle bars cold; can you state how long this continued and how long it was before all such bars were heated before attempting to bend them?

The question and this time of examination is objected to as immaterial.

Ans. There was not simply an effort, but was the practice whenever the iron would bend properly; the latter part of this question I cannot answer definitely nor approximately.

Q. 9. Can you give the names of the workmen or any of them who bent these angle bars cold?

Same objection.

Ans. From the best of my recollection, I can only give the
395 name of Stoeckle, who was one of the first to work upon these angles.

Q. 10. Was it the blacksmiths who bent these cold angle bars, and was not Stoeckle a blacksmith?

Ans. I think it was the blacksmiths; Stoeckle was a blacksmith.

Q. 11. Wasn't George Goehler the foreman who had immediate charge of the workmen who bent these bars up to February, 1882?

Ans. I can't say that he was or was not, as Mr. Hember was the superintendant of the works, having full charge and assigning the duties to Mr. Goehler, as also to all others in the iron department.

Q. 12. Then, as I understand you, Mr. Goehler did not have regular and uniform duties to discharge between November, 1881, and February, 1882, but his duties were subject to be changed by the daily orders of Mr. Hemler; is that correct?

Ans. Mr. Goehler had only to discharge the duties assigned
396 to him by Mr. Hemler and it was optional with Mr. Hemler to assign whatever duties he chose to have Mr. Goehler perform.

Q. 13. And, as I understand you, you don't know whether Mr. Goehler during this period had anything to do either with cutting or bending the angle bars or with the supervision of the men so employed?

Same objection as before.

Ans. I do not.

Q. 14. Then you were not in the habit of paying much attention to this labor yourself, were you?

Same objection.

Ans. I was not.

Q. 15. But still you know, as I understand you, that the angle bars were uniformly bent cold for some time?

Same objection.

397 Ans. I do, from the fact of the various complaints made as to the quality of the iron; for if they were bent hot there would be no occasion for such complaints.

Q. 16. Do you know how long they continued to bend them cold, whether it was a day, a week, a month, a year or years?

Same objection.

Ans. I do not; but might ascertain this information from Mr. Williamson or Mr. Hemler.

Q. 17. But your present recollection, as I understand you, does not enable you to say whether it was a week, a year, a month, or a day that they continued to bend them cold?

Same objection.

Ans. It does not, — my present recollection.

Q. 18. You have stated that you do not now use the cut
398 shown in the patents upon which this suit is based. Will

you please state or describe exactly the cut you do use? You may do this by either making a sketch upon the face of the deposition, cutting a piece of paper, or by words alone, if that will enable you to do it.

Objected to for the reasons above given and for the further reason that it is irrelevant to any issue in this cause, and for the still further reason that it misrepresents the witness' testimony, he having nowhere testified that they do not use the patent in issue, but do not use a peculiar form of angle bar shown in that cut.

Ans. Before answering I would like to ask my counsel if I must answer that question.

Counsel for Mosler says that while believing the question to be irrelevant and immaterial he has no objection to its being answered, and instructs the witness that he may answer the question, and if the cut he is now making or the angle bar he is now using is
399 made in accordance with a subsequent patent he may refer to such patent as his answer to the question.

Witness continues: The cut we are now using is in accordance with a subsequent patent, the date of which I cannot state without reference, but I will furnish it. After referring to the Official Gazette I find that the number is 284,047 and date is August 28th, 1883.

Q. 19. In your testimony given in the interference referred to in the bill of complaint herein you referred several times to a safe said by you to have been made at your factory, either during October, 1881, or prior thereto, and having round corners and built upon angle bars cut and bent like the Hemler Exhibit No. 2. You also stated that a careful examination up to that time had not enabled you to trace that safe, and that you did not know where it was. What I desire to ask you now is whether you now know anything more about it, as to its then destination or present whereabouts?

400 (Objected to as calling for testimony relative to matters that have been settled in a prior adjudication between the same parties, and therefore is *res adjudicata;* and, further, that the matter inquired about by a decision in the former suit is regarded as a decision in this case will show as immaterial.)

Ans. I do not.

Q. 20. Do you still adhere to the statement made by you in that deposition that you showed to your attorney during September, 1881, a paper cut of an angle bar substantially such as shown in your patent No. 281,640.

(Objected to for the reasons above given.)

Ans. If that is my testimony referring to the date, I do.

Q. 21. But have you now a recollection, more or less distinct, of showing such a cut at that time to your attorney? and your attention is called to your 83rd answer in the deposition referred to.

401 (Same objection.)

Ans. I have no other recollection than the testimony referred to.

Q. 22. Will you please make the inquiry suggested by yourself in your answer to the sixteenth question above and return and give specific information in answer to said question?

Ans. I shall endeavor to get the information. Since the above answer I have ascertained from Mr. Hemler that it was about two weeks that we bent them cold; that's from the start.

MOSES MOSLER.

Cross-examination by GEO. J. MURRAY, counsel for complainant:

X Q. 23. During the time you were making these safes upon square or rectangular angle bars, such as shown in the patents here in suit, or up to the present time, have any safes so made and sold, whether made upon angle bars which were bent hot or bent cold, been returned to your company by reason of any
402 imperfection or defect in the joints formed by bending the angle bars, or have you had any complaint or complaints that the joints formed by bending these angle bars sprung apart or allowed the filling material to eat through and destroy or impair the finish of the safe?

Ans. We have never had any safe returned for the reasons in the question, nor were any complaints ever made as to the joints.

X Q. 24. After your company commenced the manufacture of safes such as described in the patents here in suit, have you had any demand or call for the old form of safe previously made and sold by your company and the other safe companies in this city, and did or did not this new form of safe supercede the old form
403 previously manufactured in this city and in the United States, so far as you know?

Ans. Not a single instance that I am aware of have we had a call for the old-style safe, as inquired about; it superceded the old form of safe.

X Q. 25. Can you state approximately the increase in the
404 number of safes you have manufactured and sold since the introduction of safes embodying the invention described and claimed in the patents here in suit—that is, I want to know about how many more safes per month of the new kind you manufactured and sold after you had commenced their manufacture than you have manufactured and sold previous to the introduction into use of the invention covered by the patents here in suit?

Counsel for respondent objects to the above, not merely because it is irrelevant, but as an effort to use this record as an advertisement.

Ans. I can hardly approximate the number per month without reference to be obtained at our office, as the increase has been quite rapid since we commenced to make that class of safes.

X Q. 26. Can you state about the extent of the increase of your sales after the inventions here issued were introduced into use? State as nearly as you can from memory.

405 Objected to as before.

Ans. I may safely say that our sales were increased at least one-third over the sales of safes constructed by the old method.

X Q. 27. Prior to the introduction into use by your company of the inventions described and claimed in the patents here in suit, were there any, and, if so, about what number and proportion, of round-cornered safes made upon angle bars of any description made and sold by any safe-makers in the United States, so far as you know?

Ans. I do not know of any safes having been made and sold having round corners with angle bars by any one previous to those made by the Mosler Safe & Lock Co.

X Q 28. Do you know of any one in the United States who advertised or pretended to make safes which were made upon round-cornered angle-bar frames, such as the safes made by your
406 company, in accordance your invention, prior to the time your company commenced *to* manufacture and sale of safes embodying the inventions described and claimed in the patents here in suit?

Ans. I do not.

X Q. 29. If such safes had been made and sold, or if any safe company in this city or in the United States had been engaged in their manufacture or sale, or if such safes had been known in the market, would you, from your position as president of the Mosler Safe & Lock Co., have known of that fact?

Ans. From the knowledge and experience that I have had in the safe business, I think I would.

X Q. 30. Please state what knowledge and experience you have had in the safe business.

Ans. I have been connected with the safe business for the
407 past twenty years; first with Diebold, Bahmann & Co., then with the Union Safe Factory; then with Mosler, Bahmann & Co. and Mosler Safe & Lock Co. for the past nine and a half years. My experience while with Diebold, Bahmann & Co. and the Union Safe Factory was quite limited, but with Mosler, Bahmann & Co. I acted in the capacity of assistant to my father, who was president and manager of that company, and with the Mosler Safe & Lock Co. as manager and president since they commenced business. Besides, I have always paid special attention to the mechanical and iron departments, and have introduced all the improvements used by this company.

Re-examination:

R. Q. 31. Is it not the fact that about the time you commenced to manufacture the round-cornered safe that Warner, the safe-medicine man, who had been heretofore the agent for the whole product of Mosler, Bahmann & Co.'s factory, became the agent for the Mosler Safe & Lock Co.?

408 Ans. It is the fact that he became the agent of the Mosler Safe & Lock Co., but only for several States, as he continued to sell the Mosler, Bahmann & Co.'s work for some time thereafter.

R. Q. 32. How long thereafter did he continue to sell the Mosler, Bahmann & Co.'s work?

Ans. I cannot state definitely, but it must have been for some months, as we had the balance of our territory assigned to others.

R. Q. 33. Wasn't it the fact that your increase of product and sales resulted from his acting as your agent and thereby bringing to you the custom of Mosler, Bahmann & Co.?

Ans. The increase of our sales resulted partly from his acting as our agent, but it did not bring us the custom of Mosler, Bahmann & Co., as I don't consider that any safe manufacturer has a custom except the agents that represent them, for almost every sale is a new customer.

409 R. Q. 34. Do you think that your sales of round-cornered safes for any year since you have been making them are greater in number and amount than the sales of Mosler, Bahmann & Co. of square-cornered safes while the patent-medicine man acted as their agent? And if you have notthe information requisite to answer this question will you please state the largest number of safes you have sold in any year since you have manufactured round-cornered safes, so that it may be compared with a year of the product of Mosler, Bahmann & Co.

Objected to as irrelevant and immaterial, unless the question refers to the number of safes of the old class of square-cornered safes sold by Mosler, Bahmann & Co. since the introduction into use by the Mosler Safe & Lock Co. of round-cornered safes made upon angle bars.

The question refers to square-cornered safes made when Warner was the agent of respondent. Counsel for respondent agrees that this whole matter is irrelevant, but aims to show by the above
410 questions the absurdity of trying to make capital by filling the record up with irrelevant material.

Counsel for complainant claims that it is relevant to show that the introduction of safes made like the complainant has been making since the introduction of the inventions here in issue have displaced the old safes made by both respondent and complainant prior to the inventions of Moses Mosler and upon which this suit is brought, and only claims that it is only irrelevant to inquire about and compare the sales made by either party of the old style of safes made by both parties prior to Moses Mosler's invention.

Ans. The first part of the question I am not prepared to answer, as I do not know the amount of business Mr. Warner did yearly for Mosler, Bahmann & Co., and I think it quite unfair to make any comparisons whatsoever as to the amount of business done for us while Mr. Warner was acting as our agent and the amount done for Mosler, Bahmann & Co. while he was acting as their agent, for the
411 following reasons: Firstly, Mr. Warner devoted his entire time and attention to the safe business while selling the Mosler, Bahmann & Co. work, whereas since he commenced selling our work his medicine business had reached such a vast magnitude

that it required his entire time and attention, thereby neglecting his safe business, and we found to such an extent that a change lately was necessary; secondly, if comparisons were made yearly as to the amount of business that Mr. Warner did for Mosler, Bahmann & Co. it would be found to vary in sales to the number of several thousand. As there was no assurance of his selling any certain number yearly, I would therefore prefer not to make an estimate of the safes sold by the Mosler Safe & Lock Co. in any one year since making the new round-cornered safe to be used as a basis of comparison.

R. Q. 35. I have understood you to state in cross-examination that prior to your manufacturing round-cornered safes upon bent angle bars there were no round-cornered safes made in this country upon bent angle-bar frames. I would ask you whether
412 you are not familiar with what are known as "express boxes," with round corners and made upon angle-bar frames, and made in many factories,—among others, Halls Safe & Lock Co., ten, twelve, and fifteen years ago?

Ans. The statement I made that prior to our making round-cornered safes upon bent angle bars I knew of no others made is correct. I am familiar with what is known as "express boxes" with round corners, but not that they were made in many factories, but simply that they were made by Mr. Hemler while superintendant of the Halls Safe & Lock Co., some ten to twelve years ago.

R. Q. 36. Well, why were they not round-cornered safes and made upon bent angle bars?

Objected to as irrelevant and immaterial and calling for an argument, and for the further reason that it does not appear anywhere in the testimony that while these express-messenger boxes were well known for some ten or twelve years that they ever suggested the invention here in issue, although thought of prior to the in-
413 vention described in the patents upon which this suit is brought.

Ans. A messenger box has never been considered a safe.

R. Q. 37. What is the difference between an express-messenger box and a safe? State of what material these messenger boxes are made, and for what they are used; also state whether they are made upon bent angle bars and have round corners.

(Objected to, 1st, as irrelevant and immaterial, and, second, because there are hundreds of these boxes in use, and respondent can readily obtain one, introduce it in evidence, and make such argument at this hearing as he may desire, without wasting the time and cumbering the record with arguments and immaterial stuff.)

Ans. I consider there is about as much difference between a messenger box and a safe as there is between a tin cash box and a safe, for the tin cash box and messenger box contain no quality
414 whatever, being neither fire proof nor burglar proof, while a safe, if properly made, will withstand these two elements. These messenger boxes are made of tin sheet iron, and used by

express companies as a mode of lock-up for transporting papers, &c., but are not depended upon for any quality, as the contents of a messenger box, whenever they can be, are placed in the safe. Some of these messenger boxes are made upon bent angle bars, and are round-cornered, but the majority of them are made square.

R. Q. 38. And it was because these sheet-iron boxes made upon round-cornered angle bars, which were made ten or twelve years ago, were not safes, in your opinion, that you made the answer you did—that there were no round-cornered safes made upon bent angle bars prior to the time when your company commenced to manufacture round-cornered safes. Is that right?

(Objected to for the reasons above given, and for the further reason that it is not competent for an infringer to question the utility of the invention or the amount of invention involved in the device approximated.)

415 Ans. I had nothing in view but to define the difference, in my opinion, in accordance with your request, between a messenger box and a safe.

R. Q. 39. Question repeated.

Ans. Yes, sir.

R. Q. 40. Is there any material entering into the construction of a fire-proof safe intended to resist the efforts of marauders or burglars that does not also enter into the construction of these round-cornered messenger boxes?

Same objection as before.

Ans. Part of the material is the same. The security afforded in a safe is entirely different from that of a messenger box. A messenger box has a large key lock, while a safe has a combination lock, and the lock, when adjusted to the outer play of the door, is made to resist the efforts of burglars by having a piece of tempered steel between the lock and outer door plate; and when the safe is
416 constructed as the Mosler Safe & Lock Co. construct theirs the lock is back of the fire-proof filling and cannot be tampered with from the outside.

R. Q. 41. Immediately after question 37 was put to you and before counsel dictated the objection to it that is in the record did not your counsel say to you or in your presence and for your benefit that there was the same difference between a messenger box and safe that there was between a safe and an oyster can?

Same objection.

Ans. My counsel did make such a casual remark, I think, only to break the monotony, or that a comparison between a messenger box and a safe were so striking he could not withhold the remark. I am quite positive that it was not done for my benefit, as he and the counsel on the opposite side no doubt are fully aware that I am capable of forming my own opinion and giving the proper replies.

MOSES MOSLER.

417 Also, at the same time and place, GEORGE J. MURRAY, a witness produced on behalf of respondent, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by JAMES MOORE, Esq., counsel for respondent, as follows, to wit:

Q. 1. Were you the attorney who solicited the various patents upon which the bill of complaint herein is founded?

Ans. I am.

Q. 2. State whether Moses Mosler at any time prior to the 4th of November, 1881, exhibited to you any cuts or drawings of bent angle bars such as is in controversy here; if he did I want you to state if there are any of these in your possession or in existence, to your knowledge.

Ans. He did. I don't think I have any of them and do not recollect whether I kept any at the time. I know that I fully understood the invention as he then described it to me and know it
418 must have been some months before the 4th of November, 1881. I know also that more than a year, perhaps nearer two years, prior to that time Mr. Mosler spoke to me about getting up his invention in round-cornered safes and had me to — an examination of the records for him and order copies of all the existing patents, if any, on round-cornered safes so that he would not make a safe infringing on anybody's patent. I do not remember how that he went into details or explained how he contemplated making round-cornered safes. The first recollection I now have of his showing me the peculiar cut which he used for making a round-cornered safe was early in the fall of 1881. I know it was months before I made the application for patent.

Q. 3. At this interview in the fall of 1881 did he exhibit one cut or several? Did he bring those cuts with him when he came to your office, or did he cut them out in your presence?

Ans. He brought no cuts with him that I remember. I remember that he took a piece of paper from the table and with
419 a penknife having scissors in it, that he carried, he bent the paper first to the shape of an angle bar, then cut out one side so as to permit it to be bent around and make a round corner. I remember that it did not close up accurately, but I understood what he wanted, knowing, after I received his suggestion, that the particular cut of any sized angle bar was only a question of geometry.

Q. 4. Do you recollect accurately the cut that he then made upon that piece of paper? If you do, you will please reproduce it; or, if there be any cut upon "Respondent's Exhibit Interference Exhibits," which is a copy of it, please point it out.

Ans. I do not recollect accurately. I think he made no measurements—just cut it out by guess-work, and explained how he wanted it. I think his explanation was that he would have to vary the upper or inner cut to suit the curve of the corner required. We had a little conversation about it, as it required very little to explain the matter to a mechanic.

420 Q. 5. Then the sheets of exhibits before you has no exhibit that is a copy or will illustrate with any approach to accuracy the cut then made by Mr. Mosler?

Ans. There are several exhibits on this sheet that illustrate the principle. I would not like to say that any one was an accurate copy of that cut, nor did I consider that cut an exact copy of what he wanted as to size. The general shape of the cut was like most of those on the sheet that have the angles that would meet short of the uncut web, with an inner cut next to the uncut web to permit the opposite web to bend round.

Q. 6. Then why, if Mr. Mosler showed you a cut from which, as you say, you understood how to make a round corner by cutting out an angle bar some months before November, did you not then apply for a patent?

Ans. I know of no reason, except that it is a general rule with me, especially with my regular clients, to advise them to first
421 reduce their invention to practical use. I think that is the rule I have invariably followed with Mr. Mosler, and for the reason that when the invention is reduced to practice, or while reducing it to practice, new features may be developed that would enable me, as a solicitor, to obtain a better patent. I have now two applications of Mr. Mosler's, that he explained to me more than six months ago, for inventions of his that I would have no difficulty in preparing the applications without further instructions from him, but I prefer to wait until I see the perfected safe embodying these inventions, as I did in that case.

Above answer objected to as an uncalled-for argument.

Q. 7. By what event, if any, do you fix the time that this conversation took place as being prior to November 4th, 1881?

Ans. There are two events that would fix the matter in my mind as prior to that date. The first is a conversation that I had with Max Mosler about it; that date was fixed by letter. Mr. Max
422 Mosler wrote me in relation to a particular invention which he was speaking about at that time, for which invention I subsequently obtained a patent for him; the other circumstance that fixed the time is the fact of Mr. Moses Mosler calling upon me with a paper cut out similar to the one he had shown me, in which the upper or inner cuts were straight instead of rounding, and asking me whether or not that was not a different invention from the one he had previously shown me, stating at the same time that in experimenting with cutting and bending the bars one of his workmen had made the cut straight, and yet it seemed to close up when bent; it was a question with him whether there was not a new principle in that and whether or not the workmen should not be joined with him as a joint inventor.

Q. 8. Did he say at that time that he had instructed that workman to make experiments, or that he desired him to do anything towards getting up such a safe, or that he had told him about the cut which he, Moses Mosler, had exhibited to you, which, as you say, was some time prior thereto?

423 Ans. I don't remember any conversation that took place on that occasion except as to the propriety or impropriety of having the workman join in the application for the patent; I don't think the name of any workman was mentioned; my only recollection is that the cut made which he exhibited to me was different from the one he had given instructions to make, in that the edges of the upper cut were straight in the cut made by the workman, while Mr. Mosler had supposed the cut would necessarily be round in order to make a close joint with the inner round corner, and that he wanted to have the patent right, whichever way it was.

Q. 9. If Mr. Mosler made any statement at that time with reference to having given instruction to any person to make such a safe, or to experiment with reference to cutting or bending such angle bars, will you state precisely what he said upon that matter? And, if you can, I wish you would give his exact language.

Ans. I would not, after this length of time, attempt to state
424 precisely what he said or to give his exact words upon that or any other occasion; I know, generally, what his inquiry was; I know that I got from him a statement of all the facts in relation to the matter in order to base the opinion which I gave him upon that occasion; I remember his saying that he wanted the exact facts, and it would make no difference, so far as the expense was concerned, whichever way it was, for he had spoken with the workman and he was entirely willing to join him in his application and assign his invention, if he had made any, to him or his company, I am not sure which; after hearing all the facts I gave as my opinion that the invention was a sole and not a joint invention and I did not believe the joint patent would be valid.

Q. 10. You have not answered my question in terms or in spirit; what I want to know is what Mr. Mosler then said with reference to his having prior thereto and prior to the workman having shown him the cut in question instructed that or any other workman to make such experiments; and if he mentioned any names
425 of workmen that he had suggested the idea to or given such instruction, give his name.

Ans. I think I have answered that question in substance. I do not remember that any name or names were mentioned. I assume, of course, that he would give his instructions, as I knew he was not a workman himself, and I think I said before he, Mr. Mosler, told me that the cut the workman made differed in the shape of its edges from the form of cut he had explained or shown to whomsoever he had given instructions.

Q. 11. Did he say explicity that he had given instructions to anybody, or did you infer from the circumstances the existence of such instructions?

Ans. I have already said that I do not remember the details of the conversation. I know that when he first explained the matter to me I had instructed him to have a safe made embodying his invention, and when he told me what had taken place as related
426 above I assumed that he had done so or was doing so or having it done. There was no instructions that any one had

done anything in relation to the invention others than make the straight-edge cut instead of the round-edge cut. I knew also, as a mechanic, that the exact form of the cut was not material or a material part of the invention; for if the opening was larger than what would be theoretically correct the iron compressing on the inside would fill the opening, and if a little larger it would compel the metal to stretch or expand on the outer curve. I did not consider the exact size or shape of the cut of the essense of the invention, and so advised him.

GEO. J. MURRAY.

Adjourned to 10.30 a. m., Tuesday, July 8th, 1884.

JERE F. TWOBIG,
Notary & Acting Sp'c'l Ex.

TUESDAY, *July 8th*, 1884—10 a. m.

Met pursuant to above-noted adjournment.
Same counsel present as before.

Also GEORGE THERWARTH, a witness produced on behalf of
427 respondent, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by JAMES MOORE, Esq., counsel for respondent, as follows, to wit:

Q. 1. Can you speak English sufficiently well to testify, or do you want an interpreter?
Ans. No.

GEO. W. LINDEMANN, being introduced to interpret the testimony of the witness Therwarth, being first duly sworn to interpret truthfully, impartially, and accurately the testimony of said witness, deposes and says:

Q. 2 to the witness Therwarth: How and for whom were you employed during the latter portion of the year 1881?
Ans. The Mosler Safe & Lock Co. I was fixing up machinery and tool-maker.
Q. 3. You are the same George Therwarth, are you not, who testified in the interference between Moses Mosler and George J. H. Goehler?
428 Ans. Yes, sir.
Q. 4. Had you any opportunity of knowing whether the angle bars used for the round-cornered safes made by the Mosler Safe & Lock Co., the manufacture of which was commenced about the time referred to, were bent in a cold state or in a hot state? And state what your opportunities for knowing about this matter were.
Ans. I did the work myself; I bent the first hoops; I and Goehler; we bent them cold.
Q. 4½. How many of those angle bars or hoops were bent cold?

Objected to as immaterial.

Ans. We only bent one cold. Mr. Mosler was there, too, when we bent this one. When we got done with bending this cold we called Mosler.

Q. 5. Why was it you only bent one cold and afterwards heated all others before bending, if that be so?

429 Same objection.

Ans. We bent all the rest hot. The reason that we did not bend any more cold is that the hoops will spring out again.

Q. 6. What effect did it have, if you know, upon the iron when you attempted to bend it cold? Did it crack or split, or what?

Same objection.

Ans. At the rounding the iron cracked and split.

Q. 7. Did they make any effort to bend others cold after the one that you say Goehler and yourself bent cold?

Same objection.

Ans. No, sir; warm.

Q. 8. When you say, in answer to question 4, "I did the work myself," do you mean that you bent the first hoop with Goehler, or do you mean that you continued afterwards to bend or assist in
430 bending hoops as your regular work?

Ans. No; that was not my work; that was an experiment, and I was only to make the tools for it; I only bent the first one.

Q. 9. Was your place in the shop such that you could know whether the subsequent hoops were bent hot or cold?

Ans. Yes; I was in the blacksmith shop at the fire. The hoops were bent hot in the blacksmith's shop.

GEORGE THERWARTH, JR.

Counsel for respondent states upon the record that this is all the testimony he desires to take.

431 THE STATE OF OHIO, } *ss:*
Hamilton County, }

I, Jeremiah F. Twobig, a notary public in and for the county and State above named, duly commissioned and qualified, and acting special examiner in the above-entitled cause by consent of the parties, do hereby certify that the above-named Charles Rippl, Julius C. Hintz, Moses Mosler, George J. Murray, and George Therwarth were by me first severally sworn to testify the truth and nothing but the truth, and that the depositions by them subscribed were reduced to writing by me in the presence of the witnesses, respectively, in my presence, and were continued from day to day, as above set forth; that the said Gustave R. Warner and George W. Lindemann were by me duly sworn to faithfully, truthfully, and impartially interpret the testimony of the witnesses, Rippl and Therwarth, respectively; that the answers of the said witnesses, as given by the said interpreters, were reduced to writing by me in the presence of the said witnesses and interpreters; that said depositions were taken by agreement of the parties, written notice being waived, and
432 that I am not of counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal this 12th day of July, A. D. 1884.

JERE. F. TWOBIG.

Notarial fee	$25 00
Witnesses' and interpreter's fees	$12 00
	$37 00

Paid by respondent.

433 And afterward, but on the same day as last aforesaid, to wit, on the said the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, came the said the respondents herein aforesaid, by its said solicitor aforesaid, and filed — the *the* office of the clerk of the court aforesaid in this cause its certain exhibit, referred to on page 2 of the foregoing depositions, so as aforesaid heretofore filed herein, marked "Respondent's Exhibit Goehler Patent No. 1," and which said exhibit, so as aforesaid filed, is in the words and figures clothed as follows, to wit:

RESP'D'T'S EX. GOEHLER PAT. NO. 7.

THE UNITED STATES OF AMERICA:

No. 268,010.

To all to whom these presents shall come:

Whereas George J. H. Goehler, of Cincinnati, Ohio, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in bending angle irons, he having assigned his right and interest in said improvement to the Mosler, Bahman and Company, of same place, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof,

434 and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said the Mosler, Bahmann and Company, its successors or assigns, for the term of seventeen years from the twenty-eighth day of November, one thousand eight hundred and eighty-two, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

[Patent Office of the United States of America.]

(Signed) M. S. JOSLYN,
Acting Secretary of the Interior.

Countersigned:
E. M. MARBLE,
Commissioner of Patents.

(Here follows diagram marked p. 435.)

435½ *Specifications and Drawings Annexed.*

UNITED STATES PATENT OFFICE.

GEORGE J. H. GOEHLER, of Cincinnati, Ohio, assignor to the Mosler, Bahmann & Company, of same place.

Bending Angle Irons.

Specification forming part of Letters Patent No. 268,010, dated November 28, 1882. Application filed May 23, 1882. (No model.)

To all whom it may concern:

Be it known that I, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton and State of Ohio, have invented certain new and useful improvements in bending angle irons, of which the following is a specification:

My invention consists in making an angular cove or notch in one of the webs of an angle iron and terminating the inner end of one side of said notch with a shoulder, that serves as an abutment or bearing, around which the other or uncut web is bent so as to produce a secure rounded corner, and without being compelled to heat or weld the bar, as hereinafter more fully described and pointed out in the claim.

In the annexed drawings, figure 1 is a perspective view of an angle iron, the vertical web of which is to be bent at the dotted line Z Z. Fig. 2 is a similar view, but showing the horizontal web of the bar notched or coved. Fig. 3 is a plan of the same, the vertical web being sectioned. Fig. 4 is a plan of the under side of the bent angle iron. Fig. 5 is a perspective view of said bent angle iron.

The angle bar or stiffener, which may be composed either of iron, steel, or other metal, has two customary webs, A B, of any suitable size and weight. It being desired to bend this bar so as to form a rounded corner on the vertical web A at the line Z Z (seen in Fig. 1), and without being compelled either to heat or weld the iron, I proceed as follows: The first operation consists in cutting, punching, or otherwise removing sufficient metal from the horizontal web B to form a cove or notch, C, the opposite sides or edges of which, *c c'*, are so converged as to insure a close miter joint when the bar is subsequently bent. The edge *c* runs directly into the web A, while the other edge, *c'*, which is much more obtuse than the edge *c*, terminates at its inner end with a slightly-curved shoulder, D, which latter is carried into the web A, as more clearly seen in Fig. 3. After this opening C *c c'* D has been made the cold bar is bent with suitable

(No Model.)

G. J. H. GOEHLER.

BENDING ANGLE IRON.

No. 268,010. Patented Nov. 28, 1882.

FIG. 1.

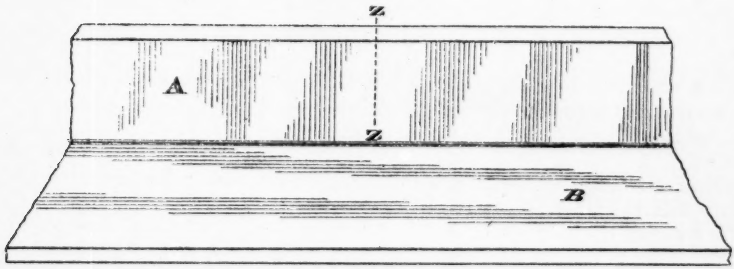


FIG. 2.

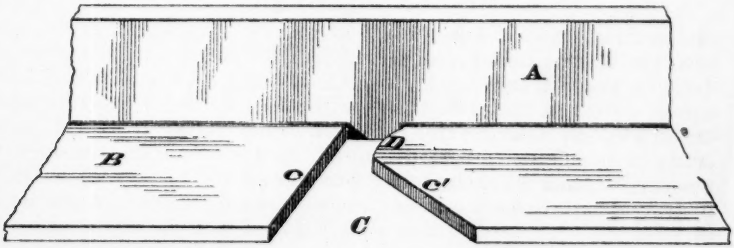


FIG. 3.

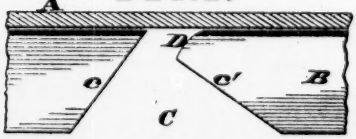


FIG. 5.

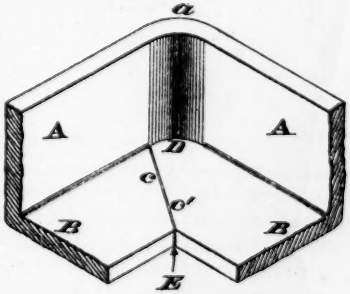
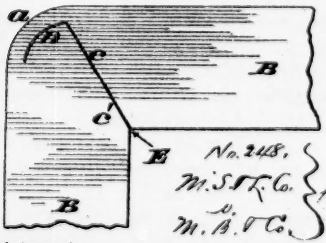


FIG. 4.



No. 248, M. S. & N. G. R. } p. 435
" M. B. & C. }

Attest.
J. P. Hunt
J. W. Logman.

Inventor.
George J. H. Goehler
by James N. Layman
Attorney.

appliances until the edges *c c'* of the cove are brought in contact with each other, and thus form a perfect miter joint, as seen at E in Figs. 4 and 5. The result of this bending operation is to produce a rounded and symmetrical corner, *a*, on the uncut web A, which corner is perfectly solid and as secure as any other portion of the bar, the intrados of said corner abutting against the shoulder D, as more clearly shown in Fig. 5.

From this description it is evident said shoulder serves as a fulcrum or bearing around which the web A is gradually bent, thereby preventing any straining or injuring of the fibers of the metal.

I claim as my invention—

An angle iron having one of its webs, B, coved or notched angularly at C *c c'*, the edge *c* of said notch being carried into the uncut web A, while the opposite edge, *c'*, is joined to said web A by a shoulder, D, as and for the purpose described.

In testimony of which invention I hereunto set my hand.

GEORGE J. H. GOEHLER.

Witnesses:

JAMES H. LAYMAN.

F. R. McCORMICK.

436 And afterward, but on the same day as aforesaid, to wit, on the said the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, come the said respondents aforesaid herein, by its said solicitor aforesaid, and filed in the office of the clerk of the court aforesaid in this case its certain exhibit, referred to on page 2 of the foregoing depositions, so as aforesaid heretofore filed herein, marked "Respondent's Exhibit, Goehler's Patent No. 2," and which said exhibit so as aforesaid filed is clothed in the words and figures as follows, to wit:

RESP'D'T'S EX. GOEHLER'S PATENT NO. 2.

THE UNITED STATES OF AMERICA:

No. 268,011.

To all to whom these presents shall come:

Whereas George J. H. Goehler, of Cincinnati, Ohio, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in bending angle irons, he having assigned his right, title, and interest in said improvement to the Mosler, Bahman & Company,

437 of the same place, a description of which invention is contained in the specifications, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said complainant is adjudged to be justly entitled to a patent — the law:

Now, therefore, these letters patent are to grant unto the said The Mosler, Bahmann and Company, its successors or assigns, for the

term of seventeen years from the twenty-eighth day of November, one thousand eight hundred and eighty two, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

[Patent Office of the United States of America.]

(Signed) M. S. JOSLYN,
Acting Secretary of the Interior.

Countersigned:
E. M. MARBLE,
Commissioner of Patents.

438 *Annexed Specifications and Drawings.*

(Here follows diagram marked p. 438.)

438½ UNITED STATES PATENT OFFICE.

GEORGE J. H. GOEHLER, of Cincinnati, Ohio, assignor to the Mosler, Bahmann & Company, of same place.

Bending Angle-Irons.

Specification forming part of Letters Patent No. 268,011, dated November 28, 1882. Application filed May 5, 1882. (No model.)

To all whom it may concern:

Be it known that I, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton and State of Ohio, have invented certain new and useful improvements in bending angle-irons, of which the following is a specification.

My invention comprises a process or method whereby a cold angle-iron can be readily bent so as to produce a secure and evenly-rounded corner on one of the webs, while the other web has a close miter-joint. This result is accomplished by first notching and slotting transversely the web that is to be mitered, and then making a slot at the junction of the two webs and longitudinally of the bar, after which act the latter is bent, as hereinafter more fully described and pointed out in the claims.

In the annexed drawings, figures 1, 2, and 3 are perspective views of the successive notching and slotting operations. Fig. 4 is a plan of the upper side of the bent angle-iron. Fig. 5 is a plan of the under side of the same. Fig. 6 is a perspective view of the corner of the angle-iron. Fig. 7 is a perspective view of the same corner after being finished. Fig. 8 is a vertical section taken through the slot G of Fig. 2. Fig. 9 is a similar section taken through the slots G H of Fig. 3.

(No Model.)

G. J. H. GOEHLER.

BENDING ANGLE IRON.

No. 268,011. Patented Nov. 28, 1882.

FIG. 1.

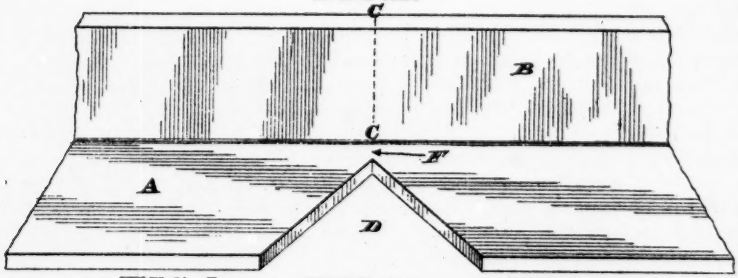


FIG. 2.

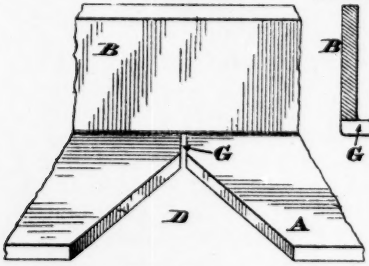


FIG. 8.

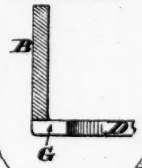
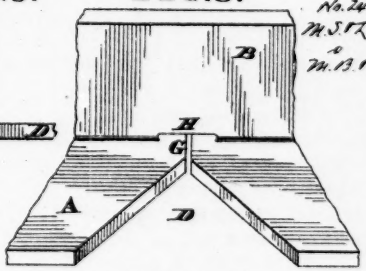
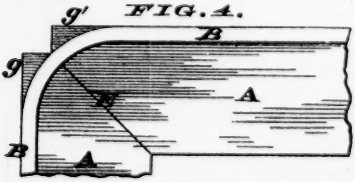


FIG. 3.



No. 248. M.S.T.Co. } p. 438
" M.B.T.Co.

g' FIG. 4.



g' FIG. 5.

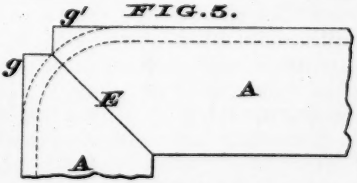


FIG. 6.

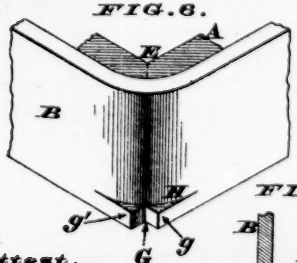
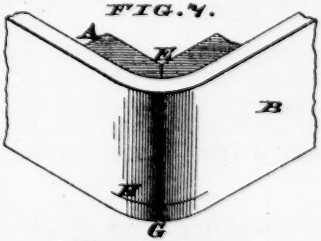


FIG. 9.



FIG. 7.



Attest.
S. G. Hart
S. S. Carpenter

Inventor.
George J. H. Goehler
by James H. Layman
Attorney.

A and B represent two angle-iron webs of any suitable size, the web A being, for the purpose of illustration, alluded to as the "horizontal member" of the bar, and the other web, B, as the "vertical member" thereof. It being desired to form a rounded corner on the vertical web B at the place indicated by the dotted line C C in Fig. 1, the first step consists in making a suitable notch or cove, D, transversely of the horizontal member A. This notch is angular, and is so shaped as to cause its two converging sides to meet quite accurately, and thereby form a perfect miter-joint, E, when the angle-iron is finally bent. Said notch is not cut completely across the web A, but a solid piece of metal, F, is left between the apex of this cove D and the junction or angle of the two members A and B, the width of this remaining interval F being about a quarter of an inch or more, according to the thickness of the metal. The web A having been thus properly notched, the next operation consists in cutting a slot, G, completely through said interval F, as seen in Figs. 2 and 8, which slot is of course vertical with reference to said web. A horizontal slot, H, is then cut through the iron exactly at the junction of the webs A B, this slot being about one inch in length and as narrow as can be made with a cold-chisel or other similar implement. Web B is now bent without being heated, which bending operation causes the two sides of the cove D to come in contact with each other and form a close miter-joint, E, as seen in Figs. 4, 5, 6, and 7. While these sides of the notch are thus approaching each other it is evident that portion of the web A in close proximity to the slot G must be gradually forced outwardly through the other slot, H, and emerge beyond the rounded corner of web B, as shown at $g\ g'$ in Figs. 4, 5, and 6. During this operation the slot H is gradually lengthened, which elongation is in exact proportion to the degree of curvature imparted to the corner of the bar.

In some cases the angular projections $g\ g'$ may be left intact for the purpose of entering suitable sockets or pits in the plates attached to the angle-iron, or said projections may be bent or upset against the rounded corner of the web B. I prefer, however, to grind these projections down until they are flush with the outer surface of the web B, as seen in Fig. 7. A reference to this illustration will show that said corner is rounded very accurately, is free from projections of any kind, while the slots E G H are closed up so tightly as to produce very secure joints.

As the above-described method of bending angle-irons can be carried into operation without heating or welding the bar, considerable saving in time and labor is effected, and there is no danger of the metal being injured by reheating the same. Finally, the miter-joint E can be very greatly strengthened by riveting one or more lap-plates onto the web A.

I claim as my invention—

1. An angle-iron having one web, B, slotted longitudinally at H, while the other web, A, is notched at D, slotted transversely at G, and said iron then bent in the manner herein described.

438½

2. An angle-iron having one web, B, slotted longitudinally at H, while the other web, A, is notched at D, slotted transversely

at G, and said iron then bent in the manner herein described, the projections *g g'* being subsequently removed for the purpose stated.

I testimony of which invention I hereunto set my hand.

GEORGE J. H. GOEHLER.

Witnesses:
JAMES H. LAYMAN.
J. C. HINTZ.

439 And afterwards, but on the same day as last aforesaid, to wit, on the said the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, came the said respondents aforesaid herein, by their said solicitor as aforesaid, and filed in the office of the clerk of the court aforesaid in this cause their certain exhibits, referred to on the second page of the foregoing depositions, so as aforesaid heretofore filed herein, marked "Respondent's Exhibit Skidmore English Letters Patent," and which exhibit so as aforesaid filed is clothed in the words and figures as follows, to wit:

Resp'd'ts Ex. Skidmore English Letters Patent.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the bound volumes of this office of the specification in drawing in the matter of the English letters patent granted Thomas Skidmore, April 7th, 1865, number 1000, — "improvement in the constructions of safes or receptacl-s for securing and protecting valuable property."

In testimony whereof I, Benj. Butterworth, Commissioner
440 of Patents, have caused the seal of the Patent Office to be affixed this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[Patent Office of the United States of America.]

(Signed) BENJ. BUTTERWORTH,
Commissioner.

441 *Safes.*

April 7th, A. D. 1865. No. 1000.

Letters patent to Thomas Skidmore, of Cleveland Place, Fettenhall road, Wolverhampton, in the county of Stafford, fire and thief proof safe-makers, for the invention of "improvements in the construction of safes or receptacles for securing and protecting valuable property."

Sealed the 19th September, 1865, and dated the 7th April, 1865.

Specification in pursuance of the conditions of the letters patent filed by the said Thomas Skidmore in the Great Seal Patent Office on the 7th October, 1865.

To all to whom these presents shall come I, Thomas Skidmore, of Cleveland Place, Fettenhall road, Wolverhampton, in the county of Stafford, fire and thief proof safe-maker, send greeting:

Whereas her most excellent majesty, Queen Victoria, by her letters patent bearing date the seventh day of April, in the year of our Lord one thousand eight hundred and sixty-five, in the twenty-eighth year of her reign, did for herself, her heirs, and successors, give and grant unto me, the said Thomas Skidmore, her
442 special license that I, the said Thomas Skidmore, my executors, administrators, and assigns, or such others as I, the said Thomas Skidmore, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter, during the term therein expressed, should and lawfully might make, use, exercise, and vend within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "improvements in the construction of safes or receptacles for securing and protecting valuable property," upon the condition (amongst others) that I, the said Thomas Skidmore, my executors or administrators, by an instrument in writing, under my or their or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and to cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of the said letters patent:

Now, know ye that I, the said Thomas Skidmore, do hereby declare the nature of my said invention and in what manner the same is to be performed to be particularly described and as-
443 certained in and by the following statement, reference being had to the drawings hereunto annexed and to the letters and figures marked thereon (that is to say):

In the manufacture of fire-proof safes for the protection of valuable property it has been the practice to throw the bolts into recesses formed in the fire-proof chambers, which *is* made of thin sheet iron, and it has been found that by driving in a metal wedge at the point where the door shuts into the safe or using other force the door will give way easily and a space will be made so as to admit

In witness whereof I, the said Thomas Skidmore, have hereunto set my hand and seal the fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five.

THOMAS SKIDMORE. [L. S.]

Ex'd: E. A. M., H. M. H.

(Here follows diagram marked p. 446.)

447 And afterward, but on the same day as last aforesaid, to wit, on the said the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, came the said respondents herein aforesaid, by their solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause their certain exhibit referred to on page nineteen of the foregoing deposition so as aforesaid heretofore filed in the said the office of the said clerk of the court aforesaid, &c., "Respondent's Exhibit McFarland Design Patent," and which said exhibit so as aforesaid filed is clothed in the words and figures as follows, to wit:

(Here follows diagram marked p. 447.)

RESP'D'TS' EX. MCFARLAND DESIGN PATENT.

447½ UNITED STATES PATENT OFFICE.

WILLIAM MCFARLAND, of Williamsburg, New York.

Design No. 3814, dated January 11, 1870.

Design for a Safe.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, William McFarland, of Williamsburg, in the county of Kings and State of New York, have invented a new and original design for a safe; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing, forming part of this specification.

Figure 1 is a front view of a safe illustrating my improved design.

Figure 2 is a cross-section of the same.

Figure 3 is a perspective view of the same.

Similar letters of reference indicate corresponding parts.

My invention has for its object to furnish an improved design for a safe, which shall be equally applicable to burglar-proof and fire-proof safes, and which will give a neat and ornamental, and at the same time substantial, appearance to the safe; and

It consists in the design for a safe herein shown and described.

A is the body of the safe, the corners of which are rounded, as

shown in Figs. 1, 2, and 3, said rounded corners being formed in the solid body of the metal, and without angular bands upon said corners, as shown in the drawings.

The front and rear corners of the safe are covered with angular bands B, which bands are connected with longitudinal bars or narrow plates C, extending longitudinally along the centres of the top, bottom, and sides of the safe.

The door D may have two or more panels, according to the size of the safe.

The rounded jointless corners are the distinguishing feature of the design.

Having thus described my invention, I claim as new, and desire to secure by letters' patent, the improved design for a safe, herein shown and described.

WM. McFARLAND.

Witnesses:
EDWARD HAAS.
JAMES T. GRAHAM.

448 And afterward, to wit, on the seventh day of October, in the year of our Lord one thousand eight hundred and eighty-four, an entry was made upon the journal of the court aforesaid in this cause, and which said entry so as aforesaid made is clothed in the words and figures as follows, to wit:

Journal Entry 2, 494.

MOSLER SAFE AND LOCK CO. *vs.* MOSLER, BAHMANN & CO. } 3568. Equity.

Upon application to the court the complainant is allowed up to and including the 25th day of October, 1884, to take and file rebutting testimony herein.

And afterward, to wit, on the said the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-four, came the said the complainant herein aforesaid, by its said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause the certain depositions of sundry witness, in rebuttal, taken heretofore herein before David S. Oliver, Esq., a notary public in and for the said the county of Hamilton and State of Ohio as aforesaid, on behalf of the said the complainant herein aforesaid, and which said depositions so as aforesaid filed *is* clothed in the following words and figures, to wit:

449 *Depositions* (*by Comp'l't in Rebuttal*).

Circuit Court of the United States, Southern Dist'c- of Ohio, W. D.
In Equity.

THE MOSLER SAFE AND LOCK CO. *vs.* THE MOSLER-BAHMANN CO.

The defendant will take notice that the complainant will examine witnesses in the above-named cause, under the 67th rule in equity,

as amended, before David S. Oliver, Esq., notary public, at the office of Geo. J. Murray, room 28, Wiggins' Block, S. E. cor. Fifth and Vine Sts., Cincinnati, Ohio, on Wednesday, the 22nd day of Oct., 1884, beginning said examination at 10 o'clock a. m. of said day and continuing from day to day until completed.

GEORGE J. MURRAY,
Solicitor for Compl'ts.

Received copy Oct. 21st, 1884.

JAMES MOORE.
Resp'd't's Solicitor.

450 Circuit Court of the United States, Southern District of Ohio, Western Division. In Equity.

THE MOSLER SAFE & LOCK CO. *vs.* THE MOSLER-BAHMANN CO.

Depositions of witnesses taken before me, a notary public in and for the county of Hamilton and State of Ohio, at the time and place on specified in the notice hereto attached and in conformity thereto, on behalf of the complainants in the above-named cause.

Present: Geo. J. Murray, Esq., on behalf of complainants, and James Moore, Esq., on behalf of defendants.

ABRAHAM W. SARGENT, being by me first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, and occupation.

Ans. 1. Abraham W. Sargent; fifty-four years old; 83 East Third St., Cincinnati, Ohio; commission salesman.

Q. 2. Please state what, if any, familiarity you had with the
451 business of making or selling safes and give the length of time you were in said business, if ever, and with whom you were employed.

Ans. 2. I commenced in the safe business in the fall of 1864 or 1865 with Hall's Safe and Lock Co. and was with them until the fall of 1877. I have since that time sold safes for the Diebold Safe & Lock Co. of Canton. I was with them about a month, and then I sold safes for Hall's Safe & Lock Co. on commission; since then I have been selling safes on commission. I have sold of the Mosler, Bahmann Company's, and last January, February, and March I sold safes for Farrell & Co., of Philadelphia.

Q. 3. Are you familiar with the round-cornered safe having angle-bar frames in front and back with a sheet of metal bent around them to form a curve, such as are sold by the Mosler-Bahmann Co. and the Mosler Safe Co. since the early part of 1882?

Ans. 3. The first of those bent corners I have ever seen was
452 those of the Mosler Safe & Lock Co. I cannot state with certainty if it were in 1882. Mr. Mosler called me out and showed it to me; it might have been as long ago as 1882. I have seen since them made by the Mosler-Bahmann Co.

Q. 4. Were any safes of that character in the market, so far as you know, prior to the time you were shown the round-cornered safe by Mr. Mosler?

Ans. 4. No fire-proof safes I have ever seen.

Q. 5. During the time you were engaged by the Hall Safe & Lock Co. or by Jos. L. Hall were any fire-proof safes made and sold having bent angle bars forming the front and rear frames of the safe, either square-cornered safes or round-cornered?

Ans. 5. I don't know of any having been for sale made in that way.

Q. 6. From your experience and observation which do you regard as the stronger and better safe—the old square-cornered safes,
453 such as made by the Hall Safe & Lock Co. and all other manufacturers, so far as you know, or the round-cornered safe on bent angle-bar frames, having a sheet bent around forming the outer cover, such as made by the Mosler Safe & Lock Co. and Mosler-Bahman Co.? And please give reasons for your opinion.

Objected to as immaterial.

Ans. 6. I consider the round-cornered safe a great improvement over the old-style safe; I consider the one continuous plate going around over the corner makes it stronger. On account of the two plates curving, coming together at the corner with the bars on the corner, they will not warp in fires. The continuous welded iron bar going around the front and back of the safe also makes it a great deal stronger; I have seen cases in the old-style safes without the welded bar where the backs have come entirely off; the solid welded angle bar prevents that, in my opinion.

Q. 7. How do round-cornered safes sell in the market com-
454 pared with old-style safes in use prior to their introduction?

Ans. 7. My experience is that parties prefer the round-cornered safe where they have been properly shown and explained; they have told me it was a big advantage and they wouldn't have any other safe.

A. W. SARGENT.

THEODORE MOELLERS, being first duly sworn, deposes and says as follows:

Q. 1. State your name, age, residence, & occupation.

Ans. 1. Theodore Moellers; age, forty-six; 199 George St., Cincinnati, Ohio; am a safe-maker.

Q. 2. How long have you been engaged in your present occupation as safe-maker? And please state where and in what capacity you have been employed since you have been engaged in said business.

Ans. 2. Next February it will be three years in my present place, although I have been a safe-maker between seventeen and
455 eighteen years; have been employed by Mosler, Bahman — for about one year and nine months; first I started at Hall's Safe & Lock Co., during the war time; was there about two or three years as a journeyman and then I worked as foreman; then I worked at the Mosler-Bahmann Co. for about one year and nine

months; then since I have been with the Mosler Safe and Lock Co.

Q. 3. In what department were you foreman while working for the Hall Safe & Lock Co.?

Ans. 3. In the fire-proof department.

Q. 4. While you were foreman for the Hall Safe & Lock Co., in the fire-proof department, were any safes made having front and rear frames of continuous bent angle bars either with rounded or square corners?

Ans. 4. Yes, sir; there were two made, I understand, for the Vienna Exposition, with the front and back welded. The front and back frames were welded.

Q. 5. Were these round or square cornered safes, and what
456 became of them, if you know, and who was superintendant at the time they were made?

Ans. 5. They were square-cornered safes; were packed, but never sent; what became of them I cannot tell; Mike Hemmler was superintendant, I think.

Q. 6. Were these safes made with paneled sides and top, the same as the old-fashioned square safes were made, or did they have a sheet bent around the angle frames similar to the safes made by the Mosler Safe & Lock Co. when you first entered its employment?

Ans. 6. Those safes were made the old way, with paneled sides, back, and top, and were square-cornered.

Q. 7. During the time you were employed by Mr. Hall or the Hall Safe & Lock Co. were any other safes made by said company or in the department of which you had charge having the continuous angle bars forming the back and front frames of the safe similar to those you say were made to be sent to the Vienna Exposition?

457 Ans. 7. No, sir; not as long as I was in that department.

Q. 8. Can you state the year you left the employ of the Hall Safe & Lock Co.?

Ans. 8. Five years ago next June, I think.

Q. 9. What would be the difference in cost between making a safe having the square welded corners similar to those made while Mr. Hemmler was superintendant and for the Vienna Exposition and the round angle-bar safe such as were made by the Mosler Safe & Lock Co. when you entered its employ, or the old square-cornered safe by Hall and others prior to the round-cornered angle-bar safe introduced by the Mosler Safe & Lock Co.?

Ans. 9. The safe like the one made for the Vienna Exposition with the square angle frame would cost about one-third more than the old-style square-cornered safe. The cost of the square angle frame,
458 one for the Vienna Exposition, and the safe at present made by the Mosler Safe & Lock Co. would be about the same.

Q. 10. What is the difference in cost between making the old-style square-cornered safe made by Hall and others and the round-cornered angle-bar safe made by the Mosler Safe & Lock Co. during the year 1882?

Ans. 10. We have the machinery for making them, and the cost

is about the same; before we had the machinery it was a different thing; of course, it would cost more.

Q. 11. During your employment by the Mosler-Bahmann Co. did that company make any safes upon angle-bar frames cut out and bent around and forming the front and rear frames of the safe either square cornered or round cornered?

Ans. 11. They did not.

Q. 12. Since your employment by the Mosler Safe & Lock Co. has that company made any old-style safes such as were generally made before the introduction of the round-cornered angle-bar

459 safes by the Mosler Safe & Lock Co.; and, if so, how many, if you know?

Ans. 12. There were no more made after the old stock was worked off, except one square-cornered welded angle frame back and front had to be taken off and a round-cornered angle bar put on; the square frame is in the factory yet.

Q. 13. Please state, if you know, when the Mosler-Bahmann Co. first began to make safes having the front and rear formed of angle bar, having the one web of the angle bar cut away and the angle bars bent around to form the front and rear frames of the safe, and having a sheet bent around said frame to form side, back, top, and part *and* of bottom like the safes made by the Mosler Safe & Lock Co. when you first entered its employ.

Ans. 13. I do not know when the first one was made; there were nine made while I was there.

Q. 14. Please examine "Respondent's Exhibit Skidmore's

460 English Patent," now shown you, and state if you have read the same and understand the invention shown and described therein.

Ans. 14. I have read it and understand it.

Q. 15. Would a mechanic skilled in the art of safe-making be enabled from the description of said patent to make a round-cornered angle-bar safe such as described in the patent here in suit and such as made by the Mosler Safe & Lock Co. since you have been in its employ?

Ans. 15. I guess not; it is simply a square-cornered safe, except the corner is sharp on the outside angle.

Q. 16. Would or would not the Skidmore English patent suggest to any mechanic the invention of round-cornered safes such as made by the Mosler Safe & Lock Co., when you entered first its employment in 1882?

Ans. 16. I guess not.

461 Q. 17. Do you find in the Skidmore Englist patent a description of the safe formed upon angle bars having one web cut away to permit the other bar to bend around and form a round-cornered angle-bar frame, and do you find from description or drawing of said patent that two frames so cut and bent are used to form the skeleton or frame of the safe, or do you find any sheet-metal cover bent around said angle frame to form the cover or envelope of the safe?

Ans. 17. I do not.

Cross-examination:

X Q. 18. Were you present at the bending of the angle bars upon which the safes for the Vienna Exposition were built? Who bent them? Were they bent hot or cold?

Ans. 18. I was not present; that was done in the blacksmith's shop; it was done hot.

X Q 19. In what year was this done?

Ans. 19. I could not say.

462 X Q. 20. Was it five years ago or ten years ago, or fifteen years ago?

Ans. 20. Between ten and fifteen.

X Q. 21. When did William Corry become superintendent of Hall's Safe & Lock Co.?

Ans. 21. I don't know when it was exactly; he was first assistant under Harry Milward.

X Q. 22. Were you foreman in the fire-proof department while Corry was superintendant of the factory?

Ans. 22. Yes, sir.

X Q. 23. How many foremen were in the fire-proof department?

Ans. 23. I was the only one in the fire-proof department.

X Q. 24. Did you know Tom McCormick, who worked there; and when was he foreman in the fire-proof department, if

463 ever?

Ans. 24. I know him; after I left he got my place as foreman in the fire-proof department.

X Q. 25. Now, are you sure what year you left there?

Ans. 25. I think it was seven or eight years ago I left for one week and was hired over again in the burglar-proof department and had charge of putting on locks and bolts and burglar work.

X Q. 26. Then how long did you work in the burglar-proof department?

Ans. 26. I think nearly two years or a little over.

X Q. 27. Then you ceased to work in fire-proof department between 1875 and 1877; is that right?

Ans. 27. Yes, sir.

X Q. 28. You don't know what was done in the fire-proof department after you went upon burglar work, do you?

464 Ans. 28. I do not know; was on the other side of the square.

JOHN THEODORE MOELLER.

Respondent here offers in evidence certified copy of file wrapper and contents in the matter of the application of George J. H. Goehler, assignor to the Mosler Bahmann and Company, filed February 20th, 1882, for improvements in bending angle iron for safes, and being the application that was in interference with Moses Mosler, marked "Respondent's Exhibit Goehler Bill and Contents." The introduction of said exhibit is objected to at this stage of the examination, and for the following reasons:

1st. That — is not a complete record of the interference proceedings

nor is it the complete application of Goehler, between which application and the application of Mosler for which the patent in suit was granted, the interference was declared.

465 UNITED STATES OF AMERICA, }
State of Ohio, Hamilton County, } *ss:*

I, David S. Oliver, a notary public in and for the county of Hamilton, State of Ohio, by consent of counsel acting examiner in the cause, do hereby certify that the foregoing depositions of Abraham W. Sargent and Theodore Moellers were taken on behalf of the complainants pursuant to the notice hereto annexed, at the time and place named therein; that the said witnesses were duly sworn and examined, and the depositions of said witnesses were reduced to writing and read to them by me and by them subscribed in my presence; that the exhibit referred to in said evidence was introduced into evidence and identified by my signature; that George J. Murray appeared on behalf of complainant and James Moore on behalf of defendant; that I am not connected by blood or
466 marriage with either of said parties nor interested, directly or indirectly, in the matter in controversy.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal on this 25th day of October, 1884.

DAVID S. OLIVER,
Notary Public, Hamilton Co., Ohio.

Notary's fee, $4.00; paid by complainant.

D. S. O.

467 And afterward, to wit, but on the same day as last aforesaid, to wit, on the said the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-four, came the said respondents herein as aforesaid, by their said solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause their certain exhibit referred to on page sixteen of the foregoing deposition so as aforesaid hereto filed in this cause, and which said exhibit is therein designated "Respondent's Exhibit Goehler's File and Contents," and which said exhibit so as aforesaid filed in this cause is clothed in the words and figures as follows, to wit:

RESP'D'T'S EX. GOEHLER FILE AND CONTENTS.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the application of George J. H. Goehler, assignor to the Mosler, Bahmann and Company, filed February 20, 1882, serial number 53140, improvement in bending angle irons for safes.

In testimony whereof I, R. G. Dyrenforth, acting Com-
468 missioner of Patents, have caused the seal of the Patent Office to be affixed this 30th day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

(Signed) R. G. DYRENFORTH,
Acting Commissioner.

469 *Petition.*

To the Commissioner of Patents:

Your petitioner, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton, State of Ohio, prays that letters patent may be granted to the Mosler, Bahmann and Company, of the same place, for the improvement in [bending angle irons for safes, &c., &c.]* safes, as set forth in the annexed specification.

Amendment Oct. 23, 1882.

And he hereby appoints James H. Layman, of Cincinnati, Ohio, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, to sign the drawings, and to transact all business in the Patent Office connected therewith.

Signed at Cincinnati, Ohio, this 14th day of February, 1882.

GEORGE J. H. GOEHLER.

470 *Specification.*

To all whom it may concern:

Be it known that I, George J. H. Goehler, a citizen of the United States, residing at Cincinnati, in the county of Hamilton and State of Ohio, have invented certain new and useful improvements in [bending angle irons for safes, &c., &c.]* safes, of which the following is a specification.

Amendment, Oct. 23, 1882.

Insert "G." Amendment, Oct. 23d, 1882.

[The object of my invention is to bend angle irons for safes, bridges, jails, and other metallic structures, so as to afford neat and perfectly secure rounded corners and without being compelled to heat or weld the bar.]*

This result is accomplished by so cutting or notching one
471 of the webs of the iron *so* as to permit the other web being readily bent to the desired degree of curvature, which bending operation draws the edges of said notch or angular opening in close proximity with each other so as to afford a mitered joint for the cut web, as hereinafter more fully described, and pointed out in the claims.

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* Words and sentences enclosed in brackets erased in original.

[My invention further consists in making suitable bands, frames, or hoops from angle irons with their corners rounded, as above described, and using two or more of said frames as a skeleton for a fire-proof safe, the top, both sides, and a portion or all of the bottom of said safe being composed of a single sheet or plate of metal bent around and rivetted to said skeleton, as hereinafter more fully described, and pointed out in the claims.]*

Insert "B." Amendment, Oct. 4, 1882. Cancelled, May 23, 1882.

In the annexed drawing—

Fig. 1 is a perspective view of an angle iron which is to be bent at the place indicated by the dotted line Z Z.

Fig. 2 is a similar view of the bar, but showing the appropriate web cut or notched preparatory to being bent.

Fig. 3 is a plan of the bent bar.

Fig. 4 is a plan of the under side of the same.

472 [Fig. 5 is a plan of a modified form of the notch or opening in the web of the angle iron.

Fig. 6 is a front elevation of a safe built upon an angle-iron frame, having its corners rounded according to my invention.]*

Insert "C." Amendment, Oct. 4, 1882. Cancelled May 23, 1882. Cancelled May 5th, 1882.

The angle bar or stiffener, which may be composed either of iron, steel, or other metals or compositions of metals, is made with two webs, A B, of any desired angle, size, and strength of material.

It being desired to bend this bar at the line Z Z, seen in Fig. 1, and without being compelled either to heat or weld the iron, I proceed as follows:

The first step consists in cutting or punching or otherwise removing sufficient of the metal from the web B to form a cove, C, the opposite sides of which, *c c*, are of such an angle as to insure an accurate mitre joint when the bar is finally bent.

This cove does not extend the entire width of the web B, but develops into an approximately triangular opening, D, the base of which is flush or in line with the inner face of the uppermost web A.

The angular sides *d d* of this opening join the sides *c c* of the
473 cove, thereby affording a contraction or waste, E, and causing these two communicating members C E to have a dovetailed shape.

This dovetailed opening having been properly formed the cold bar is then bent with suitable appliances until the edges *c c* of the cove meet and form a perfect mitre joint, C, as seen in Figs. three and four.

* Words and sentences enclosed in brackets erased in original.

As a result of this proceeding the web A has a rounded and symmetrical corner formed on it at *a*, as represented in Figs. 3 and 4.

It is evident that, as the contraction or waist E closes up while the side- *c c* of the cove are approaching each other, the sides *d d'* of the angular opening D must be forced toward and finally impinge against the inner face of web A.

Consequently the sides *d d* act as bearers or abutments to prevent an inward bending or buckling of said web and compel the bar to curve or bow outwardly.

The iron represented in Figs. 3 and 4 reveals the joint C' and also renders perfectly clear how the metal at the bend is compressed firmly against the sides *d d*.

[The above is a description of the preferred method of notching the cut web of the angle iron, but the shape of the opening may be modified as seen in Fig. 5, where the cove C, instead of having its sides *c c* at equal angles, has one side, *c*, carried completely into the web A, while the other side, *c'*, is quite obtuse.

474

Insert "D." Amendment, Oct. 4, 1882. Cancelled May 23, 1882.

Furthermore, this side, *c'*, joins the web A with a curved extension, F, which extension serves as the abutement around which said web is bent.

Cancelled May 23, 1882.

Also modifications of these openings will readily suggest themselves to a person who is familiar with the art of bending metals.

In Fig. 6 an angle iron is shown bent at four different places so as to form a rectangular frame with rounded corners, the ends of the iron being preferably welded together, thereby rendering said frame a continuous piece of metal.

Cancelled May 5th, 1882.

Of these continuous frames two or more are used as a skeleton for building fire-proof safes, the shell of the same being composed of a single sheet or piece of metal so bent as to form the top G, sides H H', and portion *h h'* of the bottom, the central part of said bottom being made of a seperate piece, I, supplied after the filling has been poured in.

But, if desired, the plate may be carried along the entire bottom of the safe and the filling be poured in at the back or other convenient place.

475

This construction of safe is readily accomplished on account of the easy and expeditious manner in which the metallic plate can be bent to fit snugly to the rounded corners of the supporting frames or hoops, which advantage could not be obtained if the plate had to be formed with perfectly square angles.] *

Cancelled May 5th, 1882.

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* Words and sentences enclosed in brackets erased in original.

Finally, my invention, although designed more especially for safes, is not to be confined to this use alone, but may be employed in the construction of bridges, jails, and other metallic structures.

Claims.

I claim as my invention—

Insert "E." Amendment, Oct. 4, 1882. Substitute of in amend't July 5th, 188–.

[1. The within-described process of bending rounded corners on one of the webs of an angle iron for the purpose stated.

2. An angle iron having one of the webs coved or notched and the other web bent so as to produce a rounded corner for the purpose stated.]*

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3. An angle iron having one of its webs, B, coved or notched at C *c c' D d d'* E and the other web, A, bent so as to afford a rounded corner, *a*, as and for the purpose described.

476

Insert "F." Amendment, Oct. 4, 1882. Cancelled May 5th, 1882.

[4. A safe constructed by bending a single sheet or plate of metal, G H H' *h h'*, around a number of angle-iron frames or hoops, having their corners rounded in the manner herein described.]*

In testimony of which invention I have hereunto set my hand.

GEORGE J. H. GOEHLER.

Witnesses:

JAMES H. LAYMAN.

J. C. HINTZ.

477 & 478 *Oath.*

STATE OF OHIO, *Hamilton County,* } *ss:*

George J. H. Goehler, the above-named petitioner, a citizen of the United States and resident of Cincinnati, in the county of Hamilton and State of Ohio, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the improvements in bending angle irons for safes, &c., described in the foregoing specification; that he does not know and does not believe that the same was ever before know- or used; that the same has not been patented to him nor to others with his knowledge or consent in any country, and that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application.

GEORGE J. H. GOEHLER.

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* Words and sentences enclosed in brackets erased in original.

Sworn to and subscribed before me this 14th day of February, 1882.

[L. S.] DAN'L KELLY,
Notary Public in and for Hamilton Co., Ohio.

[Endorsed:] U. S. Patent Office, Feb. 20, 1882. Book No. 110–1501. Div. 13. Serial No. 53140. In the U. S. Patent Office. In the matter of the application of —— —— for letters patent for —. Petition, power of attorney, specification, and oath. Filed by —— ——.

Bending Angle Irons for Safes. Filed Feb. 20, 1882.

479 M. L. D. Room No. 48.

No. 53140.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Mar. 29th*, 1882.

George J. H. Goehler, care James H. Layman, room "H" Opera House, Cincinnati, Ohio:

On examination of the above case it is found that the invention set forth in the 1st, 2nd, and 3rd claims is anticipated by English patent to Skidmore No. 1000, A. D. 1865.

The subject of the fourth claim is a distinct and independent invention from that set forth in the first three; both cannot be claimed in a single application; a safe, however, is not shown, but a part of a safe frame.

The claims are rejected on reference and reason given.

J. W. JAYNE, *Ex'r.*

C. H. MIXER.

[Endorsed:] Book No. 110–1501. Rejection. Mar. 29, 1882.

480 *Bending Angle Irons. Feb.* 20, 1882.

53140.

M. L. D. Room No. 48.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *May 2d*, 1882.

Geo. J. H. Goehler, care of J. H. Layman, Cincinnati, O.:

The attorney in the above case has demanded by telegraph that an interference shall be declared between some application not identified of applicant Goehler and a pending application of one Mosler.

It is not known to the office whether the application of Goehler referred to by telegraph is that hereinabove named, but in case it

should prove to be such the attorney is hereby informed that an interference is impossible in the present state of the case, the application standing rejected on reference and for cause.

J. W. JAYNE, *Ex.*

[Endorsed:] Book No. 110–1501. 2. Office letter. May 2, 1882.

481 *Model.*

In the Matter of the Application of GEORGE J. H. GOEHLER for patent on "bending angle irons for safes." Filed Feb. 20th, 1882. 53140.

CINCINNATI *May 2nd*, 1882.

Hon. Commissioner of Patents.

SIR: The aforesaid application is hereby amended as follows: Erase lines 18 and 21, inclusive, of the second page of the specification and cancel Fig. 6 from the drawings.

Erase all of page 5, beginning with line 10.

Erase lines 1 and 12, inclusive, of page 6.

Erase the fourth claim.

It will be seen that the above erasures remove from this case the subject-matter decided by the examiner to be a "distinct and independent invention" in the official letter of March 29th, 1882. In regard to the reference alluded to in said letter, it is only necessary to state that Skidmore's English patent described an impracticable invention, in proof of which assertion there is herewith inclosed two samples of iron bent according to applicant's method, two
482 samples bent according to Skidmore's patent, and affidavits from three practical metal workers as to the worthlessness of Skidmore's process. A comparison of these four samples will show that both of Goehler's irons have perfect and well-rounded corners, while the two irons bent according to the specifications and drawings of the English patent are so torn and cracked at *at* the corners as to be of no account whatever.

It is admitted, however, that Skidmore could form a secure corner on his bar after heating the latter, but this is the difficulty overcome by applicant's invention, as he is able to bend the very heaviest angle irons without reheating the same.

Therefore, as Goehler's invention enables a cold angle iron to be readily bent, while the English patent de-cribes a method that necessitates the reheating of the iron, it is evident the inventions must be dissimilar.

For this reason an early and favorable reconsideration of the case is respectfully solicited by

Your obedient servant, JAMES H. LAYMAN,
Attorney for said Goehler.

483 CINCINNATI, O., *May 1st*, 1882.

I, George J. H. Goehler, of Cincinnati, do hereby certify that I am a practical metal worker, and have been engaged in the business for about eighteen years. I have been engaged in the

manufacture of safes both in Europe and in this country for the past fifteen years.

The enclosed piece of angle iron, designated as "George J. H. Goehler Bending Angle Irons, Exhibit A," was bent by myself while the iron was cold, and the fracture in the corner was the natural result of such a proceeding.

The iron is the very best quality that can be got in the market.

From my practical experience in working metal I know that a thousand pieces similar to this exhibit could be bent cold and yet not one of them would be perfect. They would all crack at the corner.

GEORGE J. H. GOEHLER.

Sworn to and subscribed before me this first day of May, 1882.

[L. S.] SAMUEL S. CARPENTER,
Notary Public in and for Hamilton Co., Ohio.

Attest:
JAMES H. LAYMAN.
SAM'L S. CARPENTER.

484 CINCINNATI, *May* 1, 1882.

I, Charles Rippe, of Covington, Ky., do hereby certify that I am a practical metal worker, and have been engaged in the business for the past twenty-seven years.

I also certify that the inclosed piece of angle iron marked "George J. H. Goehler's Bending Angle Irons, Exhibit B," was bent by myself for the purpose of determining if such a piece of iron could be bent cold.

This piece is a good quality of iron, for which the regular list price was paid, and although it was bent slowly and with considerable care it was fractured, as seen.

From my extensive experience as a metal worker I know it is impossible to bend such a piece of angle iron cold without causing it to break at the joint and thereby be rendered unfit for use.

CHARLES RIPPE.

Sworn to and subscribed before me this first day of May, 1882.

[L. S.] SAMUEL S. CARPENTER,
485 *Notary Public in and for Hamilton County, Ohio.*

Attest:
JAMES H. LAYMAN.
SAM'L S. CARPENTER.

486 CINCINNATI, *May* 1, 1882.

I, Julius C. Hintz, of Cincinnati, Ohio, do hereby certify that I saw Charles Rippe bend the enclosed piece of angle iron marked "George J. H. Goehler's Bending Angle Iron, Exhibit B," and know the statement over his signature to be correct.

The cold piece of iron was bent very slowly, and before the corners had been carried two-thirds of the way around the metal commenced to break.

I have been engaged in metal working for more than ten years, and know the result of attempting to bend angle iron while cold is to break at the corner.

J. C. HINTZ.

Sworn to and subscribed before me this first day of May, 1882.

[L. S.] SAMUEL S. CARPENTER,
Notary Public in and for Hamilton County, Ohio.

Attest:
JAMES H. LAYMAN.
SAMUEL S. CARPENTER.

[Endorsed:] U. S. Patent Office, May 5, 1882. Book No. 110–1501. 3. Amendment and affidavits. May 5, 1882.

487 *Bending Angle Irons. Feb.* 20, 1882.

53140.

M. L. D. Room No. 48.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.
WASHINGTON, D. C., *May* 8, 1882.

George J. H. Goehler, care of J. H. Layman, Cincinnati, O.:

The above application has been again examined in view of the amendment made to it, and the remaining claims except the 3d are again rejected.

The 1st claim alleges as the invention a process, but it does not particularize a process, and the invention otherwise implied is, — for aught that appears to the contrary, might by the reference, while claim 2 is plainly met by said reference. The real invention appears to be a mode of prepar- bars of angle iron to be bent into angular forms, and this mode should, in view of the common art of bending wood, no less than in view of the reference, be particularly specified in the claim.

A claim to such mode is suggested in pencil note herewith enclosed, which, if substituted for the present 1st and 2d claims, would, together with the 3rd claim, be allowed, unless additional
488 reference should in the meantime be found.

J. W. JAYNE, *Ex'r.*

[Endorsed:] Book No. 110–1501. 4. Rejection. May 8, 1882.

489 In the Matter of the Application of GEORGE J. H. GOEHLER for patent on bending angle irons for safes. Filed February 20, 1882. 53140.

CINCINNATI, *May* 20, 1882.

Hon. Commissioner of Patents.

SIR: The aforesaid application is amended as follows: Erase all of page 1, beginning with line 19; erase line 1 of page 2; erase lines 15, 16, and 17 of said second page, and cancel Fig. 5 from the sheet of drawings.

Erase all of page 4, beginning with "the above is," line 21; erase lines 1 and 9, inclusive, of page 5.

Respectfully submitted by your obedient servant,

JAMES H. LAYMAN,
Attorney for said Goehler.

[Endorsed:] U. S. Patent Office. May 23, 1882. Book No. 110–1501. 5. Amendment. May 23, 1882.

490 *Bending Angle Iron. Feb. 20th,* 1882. 53140.

M. L. D. Room No. 48.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *May* 24, 1882.

George J. H. Goehler, care of J. H. Layman, Cincinnati, O.:

The above case, amended, has been considered. The English patent heretofore referred to describes and illustrates a "method of bending a rounded corner on one of the webs of a bar of angle iron." Applicant describes and illustrates the same method, and he accomplishes by it the same result; but he has improved the method by an addition in virture of which a rounded corner of larger curvature is obtained, and it is this addition or improvement, and this only, that he is entitled to claim, unless, perhaps, he shall conclude to amend the specification in a manner that shall make us distinctly recognize what of the method as he practices it is old and point out particularly what of the method has been added and is new.

Claims 1 and 2 are again rejected.

J. W. PAYNE, *Examiner.*

[Endorsed:] Book No. 110–1501. 5. Rejection. May 24, 1882.

491 *Bending Angle Iron. Feb.* 20, 1882. 53140.

M. L. D. Room No. 48.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *June 30th,* 1882.

Geo. J. H. Goehler, care of J. H. Layman, Cincinnati, Ohio:

Applicant is hereby informed that there is pending before the office another application for patent which describes and shows the

same invention that the applicant describes and shows, and that so much of the invention in the two cases as is new—regard being had to the English patent heretofore referred to in this case—are in conflict; wherefore, with the view to the declaration of interference between the two applications, applicant is, under office rule 96, allowed 10 days after, including this day, within which to amend his application, if he shall elect to do so.

J. W. JAYNE, *Examiner.*

[Endorsed:] Book 110–1501. 7. Office letter. June 30th, 1882.

492 In the Matter of the Application of GEORGE J. H. GOEHLER for patent on "bending angle irons for safes," &c. Filed February 20th, 1882. #53140.

CINCINNATI, *July 3d,* 1882.

Hon. Commissioner of Patents.

SIR: The aforesaid application is further amended by erasing the first and second claims and inserting the following:

[1. The within-described process of bending angle irons, which process consists in providing one of the webs of the bar with an inwardly cove communicating with a smaller opening having shoulders that serve as abutments against which the other or the uncut web is brought to bear so as to be bent as herein described, the angular sides of the cove gradually approaching each other and forming a mitre joint at the junction of said cut web, when the operation is finished, as set forth.]*

Insert "L." Amendment, Oct. 4, 1882. A.

Change the numeral of claim 3 to 2.

Respectfully submitted by your obedient servant,

JAMES H. LAYMAN,
Attorney for said Goehler.

[Endorsed:] U. S. Patent Office, July 5th, 1882. Book No. 110–1501. 8. Amendment. July 5, 1882.

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* Words and sentences enclosed in brackets erased in original.

493 *Interference.*

Room No. 153. C.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *July 12th*, 1882.

[U. S. Patent Office, July 13, 1882. Ex'r of Interferences.]

George J. H. Goehler, care Jas. H. Layman, room "H" Opera House, Cinn., Ohio:

Please find below a copy of a communication from the examiner concerning your application for letters patent for an improvement in bending angle irons for safes, No. 53140, Feb. 20, '82.

Very respectfully, E. M. MARBLE,
Commissioner of Patents.

Room No. 153.

Your case above referred to is adjudged to interfere with others hereafter specified, and the question of priority will be determined in conformity with the rules.

The statement demanded by rule 105 must be sealed up and filed on or before the 10th day of August, 1882, with the subject of the invention and name of party filing it indorsed on the envelope.

494 The subject-matter involved in the interference is a single count, viz., an angle bar one of whose sides is cut away with a cut having straight or curved edges substantially at right angles, said cut meeting an angular cut, whereby the uncut side may be bent to bear upon the cut side to form a rounded corner.

Covered specifically by the 2nd claims of both patents and by the generic 1st claim of Mosler.

The interference is between the first claim of George J. H. Goehler, of Cincinnati, Hamilton Co., Ohio, No. 43140, filed Feb. 20, '82—att'y, Jas. H. Layman, room "H" Opera House, Cincinnati, Ohio—and the application of Moses Mosler, of Cincinnati, Hamilton Co., Ohio, No. 48793, filed Dec. 27, '82—att'y, Chas. A. Neale, Washington, D. C.

A. M. WOOSTER,
Act'g Ex'r.

[Endorsed:] 9. 53140. Int. letter. G. J. H. Goehler. July 12th, 1882.

495 In the Matter of the Application of GEORGE J. H. GOEHLER for patent on bending angle irons. Filed Feb. 20, 1882. # 53140.

CINCINNATI, *August 15th*, 1882

Hon Commissioner of Patents.

SIR: You will please recognize James Moore, Esq., room 50 Pike's Opera House, Cincinnati, Ohio, as my associate in the further prose-

cution of this application, and direct all communications in regard to the same to the said James Moore, and oblige

Your obediant servant,

JAMES H. LAYMAN,
Attorney for said Goehler.

[Endorsed:] U. S. Patent Office, Aug. 17th, 1882. Associate power of att'y to James Moore.

496 Room 153.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept. 2d*, 1882.

George J. H. Goehler, care of James Moore, room 50 Pike's Opera House, Cincinnati, Ohio:

No. 53140. Filed Feb. 20, 1882. Bending angle iron for safes, now in interference with application of Mosler.

The within case having been transmitted to the primary examiner for hearing of a motion, as provided for in rule 116, the motion will be heard on Monday, September 11th, 1882, at 1 o'clock.

A. G. WILKINSON, *Ex'r.*

[Endorsed:] 10. 53140. Notice of hearing of motion. George J. H. Goehler. Sep. 2, 1882.

497 In the Matter of the Application of GEORGE J. H. GOEHLER, No. 53140, for patent for "bending angle irons for safes," in interference with Mosler.

CINCINNATI, *Sept.* 4, 1882.

Hon. Commissioner of Patents:

The letter of the examiner of the 2d inst. is before me. My reasons for asking the motion in question are stated in my letter of the 22nd ult., and to which the examiner is referred.

I will add that if the present title of the case be thought an impediment to granting similar claims to Goehler to what have been allowed Mosler, and thereby producing an issue that will dispose of the whole case, I will make such amendment to the title as the office may think necessary for that purpose.

The motion is submitted.

JAMES MOORE,
Att'y for Geo. J. H. Goehler.

[Endorsed:] U. S. Patent Office, Sept. 6, 1882. U. S. Patent Office, Sep. 7, 1882.

498 *Angle Irons for Safes. Filed Feb.* 20, '82. *No.* 53140.

Room No. 153.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sep. 28th*, 1882.

George J. H. Goehler, ass'or, &c., care of James Moore, room 50 Pike's Opera House, Cinn., Ohio:

At the request of the examiner the commissioner has remanded this case and the interfering application of Mosler to the primary examiner for further action on the merits. This action of the examiner supercedes both motions in the case, and both applicants may now amend.

The motion under rule 116 must be denied, as there was no irregularity in the declaration. The device is patentable and an interferance unquestionably exists. See request of commissioner of even date herewith. As the refusal to grant this motion deprives — of no rights, but opens the way for the presentation of claims, it is presumed that no appeal will be taken. Fifteen days will, therefore, be allowed in which to make amendments.

499 At the expiration of that time, should action not have been taken, the interference will be redeclared. Since the filing of the motions Goehler's application has been transferred from div. 13 to div. 20. Substantially the same claim as applicant's 1st was refused to Mosler on the ground that no process in a patenable sense can lie in the doing of anything in the obvious and only way applicant's invention is believed to lie in the article, and the case, as filed, would warrant the claims applicant desires to make. Should applicant desire to prosecute his claim for a process of bending metal he should disclaim all that is involved in the pending interference or file a separate application therefor.

A. M. WOOSTER, *Act'g Ex'r.*

[Endorsed:] 11. 53140. Letter. Geo. J. H. Goehler. Sept. 28th, 1882.

500 In the Matter of the Application of GEORGE J. H. GOEHLER for patent on "process of bending angle irons." Filed Feb. 20, 1882. # 53140.

CINCINNATI, *September* 27, 1882.

Hon. Commissioner of Patents.

SIR: You will please recognize Charles J. Gooch, Esq., Washington, D. C., as associate attorney in connection with James Moore, Esq., of this city, in the further prosecution of the above-named application, and address all communications in regard to the case to the said Charles J. Gooch.

Your obediant servant,

JAMES H. LAYMAN,
Attorney for said Goehler.

[Endorsed:] U. S. Patent Office, Sep. 29, 1882. 12. 53140. Asso. power of att'y. George J. H. Goehler. Sept. 29, 1882.

501 CINCINNATI, *October 2nd*, 1882.

Hon. Commissioner of Patents:

I hereby amend the application (No. 53140) of George J. H. Goehler, filed February 20, 1882, as follows:

1st. After line 8, page —, insert—

"My invention further consists in making suitable bands or frames from angle irons, with their corners rounded, as above described, and using two or more of said frames as a
"B." skeleton for a fire-proof safe, the top, both sides, and a portion or all of the bottom of said safe being composed of a single sheet or plate of metal bent around and riveted to said skeleton, as hereinafter more fully described, and pointed out in the claim."

2nd. Reintroduce and add to the drawings Fig. 6, cancelled by amendment dated May 2nd, 1882, and number it Fig. 5.

3rd. After line 17, page 2, insert as follows:

"Fig. 5 is a front elevation of a safe built upon an angle-
"C." iron frame, having its corners rounded according to my invention."

4th. After line 21, page 4, insert as follows:

"In Fig. 5 an angle iron is shown bent at four different places, so as to form a rectangular frame with rounded corners, the ends of the bars being preferably welded together,
502 thereby rendering said frame a continuous piece of metal.

"Of these continuous frames two or more are used as a skeleton for building fire-proof safes, the shell of the same being composed of a single sheet or plate of metal so bent as to form the top G, the sides H H′, and portion *h h′* of the bottom, the central part of said bottom being made of a sep-
"D." erate piece, I, applied after the filling has been poured in; but, if desired, the plate may be carried along the entire bottom of the safe and the filling be poured in at the back or other convenient place.

"This construction of safe is readily accomplished on account of the easy and expeditious manner in which the metallic plate can be bent to fit snugly to the rounded corners of the bottom supporting frames or hoops, which advantage could not be obtained if the plate had to — formed with perfectly square angles."

5th. Insert, on page 6, line 21, after the word "claims," as follows:

["1st. An angle bar, from one of whose webs is cut an inwardly converging notch, as C, to permit of the
"E." Insert "H." bar being bent, said web being further cut
Amendment, Oct. 23, out between said notch C and the uncut web,
1882. as at D, to permit of the requisite degree of curvature in said bend to form a rounded

503 corner for a safe and at the same time to provide surface, as *d d'*, against which the uncut web may abut while being bent."]*

Sixth. Erase the claim at present marked 1st, as I intend to file an independent application for the process which is the subject of it.

Seventh. Insert, after the 2d claim, as follows:

F. Insert "I." Amendment, Oct. 23, 1882.

[3rd. A safe constructed substantially by bending a sheet or plate of metal around angle-iron frames having their corners curved in the manner hereinbefore described.]*

JAMES MOORE,
Att'y for Geo. J. H. Goehler.
CHAS. J. GOOCH,
Solicitor of Patents, Washington, D. C.

[Endorsed:] U. S. Patent Office. Oct. 4, 1882. 13. 53140. Amendment. George J. H. Goehler. Oct. 4, 1882.

504 *Safes. Filed Feb.* 20, '82.

53140.

Room 153.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct.* 17, 1882.

George J. H. Goehler, care Chas. J. Gooch, present:

Considered in connection with amendment of 4th inst., the title of the case in both petition and specification should be amended to read "improvement in safes."

The paragraph at top of p. 1 should be cancelled or else restricted to the use which forms the subject of this application.

With reference to the claims, it is suggested that claim one be made more generic by cancelling "as C," in the 3d line; "C," in the 5th line; "as at D," 5th & 6th lines, and "as *d d*^{1}," 9th & 10th lines.

The 3rd claim should be made more specific.

It is only the top and sides that are constructed of the bent sheet of metal.

This should be claimed in combination with the angle-iron frames, whose specific construction should be set forth.

505 As the interferring application must be held up also, applicant is requested to take immediate action in the matter.

A. G. WILKINSON, *Ex'r,*
Per A. M. WOOSTER, 1*st Ass't.*

[Endorsed:] 14. 53140. Letter. G. J. H. Goehler. Oct. 17, 1882.

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* Words and sentences enclosed in brackets erased in original.

506 CINCINNATI, *October* 21, 1882.

Hon. Commissioner of Patents:

I hereby amend the application, No. 53140, of George J. H. Goehler, filed February 20th, 1882, as follows:

1st. Change title to "improvement in safes."

2nd. Erase first sentence, first page of the specification, embracing first six lines and word "bar" on the seventh line, and insert in place thereof as follows:

"G" "The object of my invention is to bend angle irons for safes so as to secure neat and secure rounded corners."

3rd. Erase first claim and insert as follows:

"1st. An angle bar from one of whose webs is cut an inwardly converging notch to permit of the bar being bent, said web being further cut out between said notch and the "H" uncut web to permit of the requisite degree of curvature in said bend to form a rounded corner for a safe and at the same time to provide surface against which the uncut web may abut while being bent."

4th. Erase the third claim and insert as follows:

"3rd. A safe constructed by bending a sheet of metal around the top and sides of bent angle bars which
507 "I" have one of their webs cut away to permit the other web to be bent and to provide bearings against which said uncut web may be so bent as to form rounded corners, substantially as before described."

GEO. J. H. GOEHLER,
By his att'y, JAMES MOORE.
CHAS. J. GOOCH,
Solicitor of Patents, Washington, D. C.

[Endorsed:] U. S. Patent Office, Oct. 23, 1882. 15. 53140. Amendment. George J. H. Goehler. Oct. 23, 1882.

508 *Redeclaration. Interference.*

Room 153.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct. 26th*, 1882.

[U. S. Patent Office, Oct. 30, 1882. Ex'r of Interferences.]

George J. H. Goehler, care Chas. J. Gooch, asso., present:

Please find below a copy of a communication from the examiner concerning your application for letters patent for an improvement in safes, filed Feb. 20, 1882.

Very respectfully,

E. M. MARBLE,
Commissioner of Patents.

Room No. —.

Your case, above referred to, is adjudged to interfere with others, hereafter specified, and the question of priority will be determined in conformity with the rules.

The statement demanded by rule 105 must be sealed up and filed on or before the 23 day of Nov., 1882, with the subject of the invention and the name of the party filing it indorsed on the envelope. The subject-matter involved in the interference is—

509 1st. Angle bar for safe frames, consisting of a right-angled iron bar, one of whose sides is cut away, leaving a straight or curved cut facing the uncut side, whereby the uncut side may be bent to bear upon said cut side to form a rounded corner.

2nd. An angle bar for safe frames, consisting of a right-angled iron bar, one of the sides of which is cut away with a straight or curved cut meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners.

3rd. In a safe the combination of the front and back frames formed of single-bent angle bars having one side cut away to leave straight or curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet bent around and secured to said frames to form the top and sides of the safe.

Substantially in the language of Mosler's 1st, 2nd, and 3rd claims, which interfere respectively with the subject-matter of the 1st, 2nd, and 3rd claims of Goehler.

Parties to the interference are George J. H. Goehler, #53140, filed Feb. 20, 1882, Cincinnati, Ohio; att'y, Chas. J. Gooch, present, and Moses Mosler, #48793, filed Dec. 27, 1881, Cincinnati, Ohio; att'y, Chas. A. Neale, present.

510 A. G. WILKINSON, *Ex'r*,
Per A. M. WOOSTER, *1st Ass't.*

[Endorsed:] 17. 53140. G. J. H. Goehler. Int. letter. Oct. 26, 1882.

511 WASHINGTON, D. C., *Dec.* 7, 1882.

Hon. Comm'r of Patents.

SIR: In the matter of the interference between the applications of George J. H. Goehler and Moses Mosler for imp'ts in safes now pending before the examiner of interferences, I respectfully call the attention of the office to the fact that I am an associate attorney on behalf of Goehler, and I request that all notices and other communications from the office to Goehler be directed to my care.

Very resp'y, CHAS. J. GOOCH.

[Endorsed:] United States Patent Office, Dec. 9, 1882. Chas. J. Gooch to office. U. S. Patent Office, Dec. 11, 1882.

512 Serial No. 53140. Ex'r book No. $\frac{954}{36}$.

1882.

Patent No. —. [In pencil:] Wilkinson.

George J. H. Goehler, ass'or, to "The Mosler, Bahmann & Co., of same place,

Of Cincinnati,
County of Hamilton,
State of Ohio.

Invention, bending angle irons for safes.

Petition, Feb. 20, 1882.
Affidavit, " " "
Specification, " " "
Drawing, 2 sheets, " " "
Model,
Specimen, [In pencil:] See letters within.]
First fee cash.
1. " " cert., $15, Feb. 20, 1882.
App. filed complete " " "
Examined,
Countersigned,

——— ———,
For Commissioner.

Notice of allowance, 188–.
Final fee, cash, 188–.
" " cert., 188–.
Patented 188–.

Att'y or O. P. address,
Chas. J. Gooch, asso., present.
James Moore, Esq., room No. 50 Pike's Opera House, Cincinnati, Ohio.
Asso., C. J. Gooch, pres't.
James H. Layman, room "H" Opera House, Cinn., Ohio.

513 1882.

Contents.

Application papers.
1. Rejected Mar. 29, 1882.
2. Office letter, May 2, 1882.
3. Amendment & affidavits, May 5, 1882.
4. Rejection, May 8, 1882.
5. Amendment, May 23, 1882.
6. Rejection, May 24, 1882.
7. Office letter, June 30, 1882.
8. Amendment, July 5th, 1882.
9. Letter (interference), July 12, '82.
10. Notice of hearing of motion, Sept. 2d, 1882.
11. Letter, Sept. 28, '82.
12. Asso. power of att'y, Sept. 29th, 1882.
13. Amendment, Oct. 4, 1882.
14. Letter, Oct. 17, '82.

15. Amendment, Oct. 23d, 1883.
16. Int. redeclared Oct. 26, '82.
17.
18.
19.
20.
Title: Improvement in —.
Ex'd: H. M. H., E. A. M.
[Endorsed:] 2268. D.' '84.

514 And afterward, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and eighty-four, — was filed in the office of the clerk of the court aforesaid in this cause the opinion of the court delivered upon the final decision of this cause, and which said opinion so as aforesaid filed is clothed in the words and figures as follows, to wit:

515 Circuit Court of the United States, Southern District of Ohio.
In Equity.

MOSLER SAFE & LOCK CO. *vs.* MOSLER, BAHMAN & CO. } No. 3568.

The plaintiff sues for infringement of three patents for improvements in fire-proof safes granted to Moses Mosler, plaintiff's assignor, as follows:

1. No. 273,585; application filed February 5, 1883; letters dated March 6, 1883.

The object of this invention, as stated in the specification, is to provide an improved means of constructing the outer casing so that the safe may be filled from the bottom. The front and back frames of the safe are formed from angle bars, which have one side cut away, where the bends of the corners are to be made and the uncut side bent around to close the joint in the corner and form a frame, with its outer corners rounded. The meeting joint at the bottom of the frame is overlapped by a short angle piece, which is screwed or riveted to the frame, uniting the joint. A sheet-metal cover is bent around the top sides and around the lower rounded corners of the frame. Upon each edge of this cover, at the bottom of the safe and between the angle frames, are screwed metal bars, which project beyond the edges of the cover to form rests for the bottom plate. The safe is made with the customary sheet-
516 metal box forming the interior receptacle and secured to the cast-metal door frame in the usual manner. The tops of the caster frames conform to the curve of the rounded corners, and after the bottom plate is pushed into its place the inner bolts which secure the caster frames pass through the bottom plate which they secure and the angle frames. The patentee does not claim the bent angle frames nor the safe, composed of these frames and the sheet metal cover bent around them (the same being shown and claimed by him

in an application then pending), but limits his claim to the combination, in a fire-proof safe, of the frames, the sheet metal cover bent around the top, sides, and lower corners, with projecting metal bars and removable bottom plate, substantially as described.

2. No. 281,640. This patent differs from No. 273,585 in that a particular description is given in the specification of the cuts in the side of the angle bar where the bends are to be made, but the patentee specifies that the shape of the cut may be varied, it only being essential that sufficient metal be cut away on one side of the angle bar to permit the other or uncut side to be bent, the cut nearest the uncut side being in the form of a curve or curves, so that when said uncut side is bent to form the corner it will bear upon and be supported by the curved end or portion of the cut, and thus be rounded by a curve similar to the curve of the cut.

The claims are as follows:

"1. An angle bar for safe frames consisting, substantially
517 as before set forth, of a right-angled iron bar, one of the sides of which is cut away leaving a curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve to form a rounded corner.

"2. An angle bar for safe frames consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, with curved cuts meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners.

"3. In a safe, the combination of the front and back frames, formed of single bent angle bars, having one side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet, E, bent around and secured to said frames to form the top and sides of the safe, substantially as described."

3. No. 283,136, dated August 14, 1883, application filed December 11, 1882.

The claim is as follows:

"The herein-described process of bending angle irons, which consists in cutting away a portion of one web by a cut which severs the two webs at their junction for a distance equal to the arc of the corner to be bent, and removes sufficient of metal in front of the single part of the uncut web to permit the same to bend to the desired angle and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described."

In the specification the sides of the angle bar are designated by
the letters A and B. "A" represents the uncut web and "B"
518 the cut web. The outer opening of the cut "C" is made by lines at angles of forty-five degrees to the edge of the web, so that when the bar is bent the edges of this opening meet each other in a true miter. The inner opening "D," which extends outward within converging curved lines form the angle of the bar to where it meets the opening "C," extending inward from the edge of B, and within converging lines (the letter X suggesting the shape of the entire opening excepting that the outer opening extends nearly to the angle of the bar), has a dovetailed shape, bounded by curved lines described from points upon the miter line and the face of the

uncut web A. The curved ends of the web B abut against the uncut side when the bar is bent, making a close joint.

The patentee states in the specification that "the shape of the opening or cut-away portion of web B may be varied at will so long as the meeting line or lines be not extended beyond the space bounded by the rounded corner, and the edge lines extended to web "A."

The angle bars cut out as described, it is stated in the specification, may be bent to the proper form by the machine represented by Fig. 6 in the accompanying drawings. "In this, E represents a metal block having upwardly-projecting sides, screw-tapped to receive clamping screws F. The opposite corners of the block are rounded to fit the inner curve of the desired corner. G is a loose block of iron, between which and the side of block E the uncut web A is clamped by screws F, the other web, B, resting on the block, the cut-away part over the rounded corner; by force applied
519 to the projecting end of the bar it is bent around until the severed edges meet in a close joint."

"The angle bar herein shown is not claimed, as it is the subject of a pending application."

The safes described in these patents are filled through the bottom opening with fire-proof cement. The bottom is then secured in place and the casters attached. The patentee states in the specification forming part of letters No. 281,640 that before his invention safes were filled from the back, and that his safes "can be completely finished before the filling is put in. The filling adds greatly to the weight; much labor in handling is therefore saved."

For the purposes of this suit these three patents may be considered as one, containing all the claims involved. As counsel for complainant suggests, the claims are for separate and distinct but not for independent inventions, at least so far as the manufacture of safes is concerned. They might have been all included in one application had the patentee chosen to so present them.

The first and second claims in letters patent No. 281,640 are for an angle bar for safe frames, consisting of a right-angle iron bar, one of the sides of which is cut away (the cuts being curved and meeting at a right-angle cut) leaving a curve facing the uncut side, whereby said uncut side may be bent to form a rounded corner.

The patentee states in the specification that he is aware "that it has been proposed to make projecting corner pieces for safes from angle iron, from one side of which a triangular piece was cut
520 out to permit the opposite side to bend." He also states that "the shape of the cut to permit the angle bar to be bent to form rounded corners may be varied without departing from the principle of my invention," &c.

In the drawings accompanying the specification forming part of letters patent No. 283,136, figure 5 represents a templet of cardboard or thin sheet metal, which the patentee states he used to determine about the shape and size of the notch or cut which it is necessary to make to admit of the bar being bent to any desired angle and to make a corner of any desired curve. The templet is

of the shape and size of a section of the angle bar. One web is severed by a cut at right angles to its edge; the two webs are then severed at their junction for some distance upon each side of the cut; then by bending the web so that the cut edges will pass each other the templet may be bent to any curve or angle desired, and the lines of the cuts required to make the proper shape of opening in angle bars to be bent to the same curve or angle marked and fixed upon. Such use of the templet as a pattern is nothing new. It is clearly shown by the testimony that cutting an opening in one web of an angle bar to permit the bending of the bar to an angle or curve was known and used before the date claimed by complainant's assignor for his invention. Different shapes of cuts and openings are shown in exhibits put in evidence by respondents. Unless the precise cuts and shape of opening shown in the drawing attached
521 to the specification forming part of the letters patent are patentable the claims are worthless. But the patentee shows how, by the use of a pattern of flexible material, an old method, and familiar as the use of the carpenter's miter box, he determines the lines of the cuts and the shape of the opening. In this there is no exercise of the inventive faculty; it is only what would occur to a mechanic of ordinary skill. Moreover, if the precise line of cuts and shape of opening shown in the drawings were patentable the patentee does not, as we have seen, so limit his claim, but seeks to cover variations, which he says may be made without departing from the principle of his invention.

Claims 1 & 2, in letters patent No. 281,640, and the claim in letters patent No. 283,136 are therefore adjudged to be invalid.

As to the combination claim, being the only claim in letters patent No. 273,585, and claim 3 in letters patent No. 281,640, they are old, excepting only—and this is not material—that the precise lines of cuts and the shape of the opening of the angle bar are not found in safes of prior manufacture. The sheet-metal cover is old. It is shown in Respondent's Exhibit St. Louis Safe. The bars C and lower removable plate D, claimed in No. 273,585, are old. See respondent's Exhibit A and the deposition of John Hurst. The safes, in the manufacture of which they were used, were square-cornered, as was then the fashion, but that is not material. When the angle frames were bent the corners were round, and then heated and hammered upon both sides of the corners, to make them square.
522 Respondent's testimony also exhibits that fire-proof safes were filled from the bottom as early as 1879, by the Cincinnati Safe & Lock Co., and in that year, probably also in 1878, by Hall's Safe & Lock Co. The complainant was the first to employ the combination claimed in the manufacture of round-cornered safes, but the change from square-cornered safes was only a change in form. The combination is nothing more than an aggregation, and falls by the application of the rulings in Hailes *vs.* Van Wormer, 20 Wallace, 368; Reckendorfer *v.* Faber, 92 U. S., 347, and in Pickering *v.* McCullough, 104 U. S. 318.

The bill is dismissed at complainant's costs.

523 *Journal Entry W.*, 36.

And afterward, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and eighty-five, an entry was made upon the journal of the court aforesaid in this cause, and which said entry so as aforesaid made is clothed in the words and figures as follows, to wit:

MOSLER SAFE AND LOCK CO.
vs.
MOSLER, BAHMANN & CO. } Equity.

This cause came on for hearing upon the pleadings and proofs and was argued by counsel; on consideration whereof the court, being fully advised in the premises, finds that the complainant is not entitled to the relief prayed for in its bill of complaint. It is therefore ordered, adjudged, and decreed that complainant's bill of complaint be, and hereby is, dismissed at its costs.

Whereupon the complainant, by its solicitor, prayed an appeal to the supreme Court of the United States, which is allowed, and the appeal bond fixed at the sum of one thousand dollars.

And thereupon, afterward, to wit, on the tenth day of February, in the year of our Lord one thousand eight hundred and eighty-five, came the said the complainant herein aforesaid, by its said
524 solicitor aforesaid, and filed in the said the office of the clerk of the court aforesaid in this cause its certain appeal bond, and which said appeal bond so as aforesaid filed is clothed in the words and figures as follows, to wit:

Appeal Bond.

Circuit Court of the United States, Western Division.

MOSLER SAFE AND LOCK COMPANY
vs.
MOSLER, BAHMAN AND COMPANY.

Know all men by these presents that we, Mosler Safe and Lock Company, as principal, and Julius Mosler, as surety, are held and firmly bound unto Mosler, Bahmann and Company in the sum of one thousand dollars, to be paid to the said Mosler, Bahmann and Company, its executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents

Sealed with our seals. Dated this tenth day of February, 1885.

Whereas the above-named Mosler Safe and Lock Company has taken an appeal to the Supreme Court of the United States to reverse the — rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

525 Now, therefore, the condition of this obligation is such that if the above-named Mosler Safe and Lock Company shall

prosecute its said appeal to effect and answer all damages, costs, if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) MOSLER SAFE AND LOCK CO. [SEAL.]
" JULIUS MOSLER. [SEAL.]

Sealed and delivered in presence of—
(Signed) CHARLES R. NEVIN.
" ROB'T C. GEORGI.

The above security is approved.
(Signed) GEORGE R. SAGE,
District Judge of the United States,
S. D. Ohio, Sitting as Circuit Judge.

Oath of Surety Attached.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Julius Mosler, one of the sureties above named, do solemnly swear that, after paying my just debts and liabilities, I am worth fifteen thousand dollars in real estate, in my own name, situate in the county of Hamilton, in said district.

(Signed) JULIUS MOSLER.

Sworn to before me the 10th day of February, 1885.

[Seal of the Circuit Court, South. Dist. of Ohio.]

(Signed) ROB'T C. GEORGI,
Dep. Clerk U. S. Circuit Court, S. D. O.

526 And thereupon, afterward, but on the same day as last aforesaid, to wit, on the said the tenth day of February, in the year of our Lord one thousand eight hundred and eighty-five, there was issued out of the said the office of the clerk of the court aforesaid in this cause our certain citation to the appellee in this cause, and which said citation so as aforesaid issued, with the return of service of the same duly endorsed thereon by the marshal of the United States within and for the said the southern district of Ohio as made by him, the said the marshal aforesaid, as returned and filed by him, the said marshal of the district aforesaid, in the said the office of the clerk of the court aforesaid, on the twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-five, is hereto attached, as follows, to wit:

Citation.

THE UNITED STATES OF AMERICA, *ss:*

To Mosler, Bahmann and Company, defendant, Greeting:

Whereas Mosler Safe and Lock Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio, made in favor of you, the said Mosler, Bahmann and

Company, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the sixth circuit, this tenth day of February, in the year of our Lord one thousand eight hundred and eighty-five.

GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio,
Sitting and Acting as Circuit Judge.

527 [Endorsed:] United States circuit court, western division. No. 3568. Mosler Safe and Lock Company — Mosler, Bahmann & Co. Citation to appellee. Filed Feb'ry 12, 1885. B. R. Cowen, clerk.

Rec'd this writ at Cincinnati, O., Feb. 10th, 1885, and served the same in Cincinnati, O., as follows: On the within named, Mosler, Bahmann & Co. by delivering a true copy hereof to J. C. Hintz, secretary & manager of said company, personally, Feb. 11th, 1885.

LOT WRIGHT, *U. S. M.*,
By C. E. TWIFORD, *Dep.*

Service	2 00
Copy	50
2 miles	12
	$2 62

528 UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio:

I, B. R. Cowen, clerk of the circuit court of the United States within and for the said division and district aforesaid, do hereby certify that the foregoing is a true and correct manuscript of the record and proceedings in the cause therein named as fully and completely as the same remain on file and of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, this 15th day of June, A. D. 1885, and in the 109 year of the Independence of the United States of America.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk U. S. Cir. C'r't, S. D. O., W. D.,
By R. C. GEORGI, *Deputy.*

Endorsed on cover: S. Ohio C. C. U. S. No. 248. The Mosler Safe & Lock Company, appellant, *vs.* Mosler, Bahman & Company. Filed, July 13, 1885.

7-354
27-354

Supreme Court of the United States,

OCTOBER TERM, 1887.

THE MOSLER SAFE & LOCK CO.,
Appellant,
vs.
MOSLER, BAHMANN & CO.,
Appellee.
No. 248.

BRIEF FOR APPELLANT.

GEORGE J. MURRAY,
COUNSEL FOR APPELLANT.

C. Sauer & Co., Printers, Cincinnati.

Supreme Court of The United States.

October Term, 1887, No. 248.

THE MOSLER SAFE & LOCK CO.,
Appellant,
vs.
MOSLER, BAHMANN & CO.,
Appellee.

This cause comes up on appeal from a decision of the Circuit Court for the Southern District of Ohio, dismissing complainants' bill. The suit was brought on three letters patent for improvements in fire-proof safes.

The three patents are but divisions of one application. It is claimed that safes manufactured by appellees infringe all the claims of the three patents sued upon.

The inventions in controversy all relate to fire-proof safes, and are:

1. Means for forming hoops or frames from angle iron bars to make the skeleton framework for the safe.

2. A method or process for cutting out one web of the angle bar so that the other web may be conveniently bent to form the bar into the desired frame.

3. A safe combining in its construction the frames so

cut and bent, and a sheet metal cover in a single piece bent around and secured to the frames, forming the top and sides of the safe.

4. A safe combining in its construction round-cornered frames constructed from angle bars, the sheet metal cover bent around the top, sides and lower corners of the frames, and removable bottom plate, the side edges of which are seated and held by bars which are seeured to the edges of the sheet metal cover. The purpose of this arrangement being to provide a convenient means to introduce the fire-proof filling from the bottom after the safe is finished, instead of filling from the back before painting or finishing the safe, as was the general practice prior to the invention in suit.

The method or process of forming the frames is the subject of Patent No. 283, 136, August 14, 1883, the claim of which is:

"The herein described process of bending angle irons, which consists in cutting away a portion of one web by a cut which severs the two webs at their junction for a distance equal to the arc of the corner to be bent, and removes sufficient metal in front of the single part of the uncut web to permit the same to bend to the desired angle and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described."

The safe composed of the angle frames, sheet metal cover and removable bottom plate is the subject of Patent No. 273, 585, March 6, 1883. The claim is:

"The combination, in a fire-proof safe, of the frames A, sheet metal cover B, bent around the top, sides and

lower corners, with C and lower removable plate D, substantially as specified."

The peculiar angle bar frame and the safe having such frames and sheet metal cover bent around them is the subject of Patent No. 281, 640, July 17, 1883. The claims are:

"1. An angle bar for safe frames, consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, leaving a curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve to form a rounded corner."

"2. An angle bar for safe frames, consisting, substantially as before set forth, of a right-angled iron bar, one of the sides of which is cut away, with curved cuts meeting a right-angled cut, whereby the uncut side may be bent to form rounded corners."

"3. In a safe, the combination of the front and back frames, formed of single bent angle bars, having one side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet E, bent around and secured to said frames to form the top and sides of the safe, substantially as described."

All of the patents were granted upon applications of the inventor, Moses Mosler, Appellant's assignor.

Prior to the inventions herein involved it was the general custom to construct fire proof safes upon square frames made from flat iron bars or strips usually about three or four inches wide by one-fourth to one-half inch thick. The top and bottom strips were as long as the width of the safe. The side or upright stiles were as

long as the height of the safe less the width of the top and bottom strips. The ends of the side sills abutted against the inner edges of the top and bottom pieces, and the frame was secured together by short strips or plates of iron lapping over the joints upon the inside, and riveted or screwed to the cross and upright stiles. After this flat metal frame was formed, a long, flat strip or band of metal of about the same width and thickness was bent into a rectangular frame or "hoop" as it was called, of the same size exteriorly as the first frame. The edge of this frame was placed against the flat inside of the front or back frame and secured to it by a number of short bracket pieces placed in the angle formed by the frame and hoop and riveted to each. When put together these formed an angle frame, one of which was used for the front, and one for the back of the safe. Straight angle pieces connected the front and back frames at the corners, and these were also united at their ends to the frames by plates riveted upon the inside. This formed the skeleton of the safe. The top, bottom and sides consisted of sheet metal panels riveted to the frames on the inside, or secured to them by metal strips or cleats. The back was closed by a sheet metal plate the full size of the back frame, which was secured onto the frame after the filling was put in, and the safe was then finished or painted.

The defects in the old method of constructing safes had long been felt and numerous attempts made to remedy them, none of which were successful, owing principally to the expense attending these prior efforts.

The following facts appearing in the Record will not be disputed:

I.

That angle bars for safe frames cut out and formed in the peculiar manner shown in the appellant's patents here in suit, and also in the Goehler patent which respondent alleges in its answer represents the safes complained of, and which is owned by appellees, were first made in appellant's factory in the early winter of 1881, and the manufacture of safes according to the new method immediately commenced.

II.

That upon their introduction they completely superseded the old style of safes, none of which have been made since in appellant's factory.

III.

Appellee, a few months after the introduction of the new safes by appellant, induced appellant's foreman, G. J. H. Goehler, and others of its workmen who had become familiar with the new safe, to leave appellant's and enter appellee's employ for the purpose of making the new safes, and since that time all safes made by appellee have been upon the new plan.

IV.

That appellee procured George J. H. Goehler to make application for the inventions here in issue, assign the same to it, and demand an interference in the Patent Office with the then pending application of Moses Mosler. That the interference was declared, fiercely contested, priority awarded in favor of Mosler

by the Examiner of Interferences, and unanimously affirmed by the Board of Examiners in Chief, and the contest was then abandoned by appellee without appeal to the Commissioner.

V.

That all the alleged anticipations were known to appellee before Goehler's application for a patent was made and were before the officers of the Patent Office and considered by them at the time the applications of both parties and the interference between them were pending.

VI.

That the safes made by appellee since the date of the patents in suit, and prior to filing the bills of complaint contain the invention shown, described and claimed in said patents.

ERRORS.

I.

The decree of the Circuit Court dismissing the bill of complainant on the ground that the patents sued upon disclosed no patentable invention was erroneous.

II.

The Court below erred in refusing to find that defendant was estopped to deny the validity of the patents or the novelty and utility of the inventions it attempted to secure patents upon, and which, ever since the utility and value of the inventions were recognized and adopted by the public, it has used con-

tinuously, to the exclusion of the safes it had theretofore been making.

III.

The Court erred in holding and deciding that claim 3, of letters patent No. 281, 640, and the claim of patent No. 273, 585 were for aggregations, and not legitimate combinations.

ABSTRACT OF PLEADINGS.

1. The Bill of Complaint recites the invention by Moses Mosler of the improvements in fire-proof safes which are the subjects of the three patents named in the bill, and the grant of letters patent therefor.

2. The assignments conveying all rights granted Mosler by the Government in said patents to Mosler Safe and Lock Company.

3. The infringement by respondent of the said patents.

4. That before the issue of the said patents the respondent procured one G. J. H. Goehler, a former employe of complainant to prepare and execute an application for the same invention described and claimed in letters patent of July 17, 1883, and August 23, 1883, assign his said alleged invention to it, and to file the said application in the United States Patent Office, and demand that an interference be declared with the then pending applications of Mosler. That an interference was thereupon declared, proofs taken by both parties, printed briefs filed and the case argued by counsel. That priority was decided in favor of Mosler by the

Examiner of Interferences; that an appeal was taken to the Board of Examiners in Chief, and the decision of the Examiner of Interferences unanimously affirmed. That in this decision by the Board of Examiners in Chief, Mosler, Bahmann & Co. acquiesced.

RESPONDENT'S ANSWER.

1. Admits the application for and grant of letters patent to Moses Mosler.

2. Admits the interference with letters patent of July 17, 1883, and the award of priority of invention to Mosler, but alleges that said award was made because the invention was made by Goehler in complainant's factory, and not because Mosler was the inventor.

3. Admits that since the dates of the patents, and prior to the bringing of the suit, it made safes in accordance with the letters patent No. 268, 010, granted upon the invention of Goehler, November 28, 1882.

4. Denies infringement and denies the novelty and utility of the said inventions.

5. Charges that the inventions were in public and common use prior to the said inventions by Mosler at the factory of Waslauck & Co., of St. Louis, at Herring & Co.'s safe factory in New York, and at the safe factories of Hall, Mosler, Bahmann & Co., The Mosler Safe & Lock Co., all of Cincinnati, Ohio.

6. Charges that the inventions described in said Mosler patents are fully described in an English patent to one Skidmore, No. 1000, of 1865, and in the United States Patents to McFarland, of November 30, 1869, and January 11, 1870. Record p. 1-12.

The record in the case is made lengthy by the respondent introducing the records of both parties to the interference proceeding in the Patent Office. The testimony taken in the cause to be used at the hearing in the Circuit Court is not voluminous. The testimony in chief on behalf of the complainant begins on p. 16 of the Record and ends at p. 39.

Interference records begin on p. 39, ends on p. 247.
Respondents' testimony begins p. 249, ends p. 282.

Complainant's testimony in rebuttal begins on p. 283 and ends on p. 307.

Complainant in support of its case offered in evidence printed copies of the drawings and specifications of the patents sued upon, which per stipulation, (Record p. 14) are to be considered with the same force and effect as if all such patents were duly certified by the Commissioner of Patents.

Also certified copies of the assignments of said patents from Moses Mosler to Mosler Safe and Lock Company, complainant.

Also affidavit of Michael Hemler which was used upon motion for preliminary injunction, Record p. 18.

Respondent consents that this affidavit may be read upon the hearing with the same force and affect as if it had been taken in the form of a deposition before the special examiner under the 67th Rule in Equity. Record, p. 17.

Also certified copies from the files of the Patent Office of certain papers in the matter of the interference between George J. H. Goehler and Moses Mosler. Exhibit, printed Record, p. 29-36.

Also certified copy of the specification, petition, oath and drawing as originally filed in the matter of the application of Goehler, which was put in interference with Mosler. Printed Record, p. 36 to top of 39.

Michael Hemler, a skilled mechanic who has been engaged in the manufacture of safes for thirty-five years, about thirty years of which time he was engaged as foreman, superintendant and proprietor of Safe Works, testifies that he has read and fully understands the letters patent in suit. Is familiar with the round cornered safes made by Mosler, Bahmann & Co. Has carefully examined the "Safe Exhibit G," and is clearly of the opinion that it contains all the inventions shown and described and pointed out in the claims of the patents sued upon.

Complainant rested.

RESPONDENT'S DEFENSE.

Respondent offered in evidence the printed Records of the interference proceeding for the evident purpose of re-trying the interference case, and making a last desperate effort to appropriate to itself the inventions in issue. But fearing to trust to this doubtful chance alone, calls witness and introduces evidence attacking the validity of Complainant's patents.

For this purpose respondent introduces in evidence English patent to Thomas Skidmore, No. 1000, of 1865.

A safe marked "Respondent's Exhibit, St. Louis Round-cornered Safe" and McFarland's Design, Patent No. 3,814, marked "Respondent's Exhibit McFarland's Design Patent."

And in support of its case introduces six witnesses, Rippe, Mosler, Bahmann & Co.'s foreman and one of its stockholders, Julius C. Hintz, respondent's manager, John Hurst and George Thorwarth, two of respondent's workmen, Moses Mosler, the inventor and patentee of the patents in suit, and Murray, the solicitor who prosecuted Mosler's applications for letters patent to final issue.

The first witness, Rippe, was called to prove non-infringement. The second one, Hurst, for the purpose of proving prior public use. Thorwarth for some purpose not very clear, and the other three, Hintz, Mosler and Murray to prove that Goehler and not Mosler was the originator of the inventions in issue.

INFRINGEMENT.

On the question of infringement there can be no doubt. It is admitted in the answer (Record p. 11), is shown by the safe, Complainant's Exhibit G, and the admission per stipulation on page 14 of Record, and the "Respodent's Exhibit Goehler Patent No. 1," Record p. 274, Rippe xA. 27-33. Record p. 252-253.

Michael Hemler, Record p. 18.

ALLEGED ANTICIPATIONS.

In regard to the devices set up by respondent in anticipation of the Mosler inventions it should be sufficient to show:

I.

That all of these were known to respondent at the time it was prosecuting the application for letters pat-

ent for the inventions shown, described and claimed in the Mosler patents upon which this suit is founded, and during the whole time the interference suit between Moses Mosler and Mosler, Bahmann & Co., was being so fiercely contested.

II.

That they were all fully considered by the Patent Office Officials before the interference was declared, and the patents allowed by these disinterested, sworn official experts of the Government, notwithstanding them.

III.

That they were known to all manufacturers of safes long years prior to the inventions of Mosler, and notwithstanding such knowledge, although attempts had been made to make safes upon the new plan they were never successfully made and introduced prior to their introduction by the Mosler Safe & Lock Co., after Moses Mosler had made his inventions and applied for his patents.

IV.

That so soon as Moses Mosler had made and introduced the new safe it completely superseded the old style, created a revolution in the art of safe making, and that none of the old style have been made as articles of manufacture and commerce since the inventions of Mosler were given to the public.

V.

That not a single witness called upon behalf of respondent has sworn that either or all of the alleged anticipating devices or patents show, describe, or even

suggest to a skilled mechanic the inventions shown, described and claimed in the Mosler patents.

Before discussing the alleged anticipating devices it should be first understood that complainant is not here claiming any and every method of forming and bending angle iron, nor any and every kind of rectangular frame or part of a frame bent from angle iron. It was, of course, understood long prior to the invention of Mosler that iron could be formed in all conceivable shapes. It may be conceded, in so far as appellant's case is concerned, that angle bar frames, substantially the same as appellant's in general appearance when completed, could have been made without the exercise of the inventive faculty, and that frames having rounded corners had been made for a different purpose by methods differing from the method invented by Mosler. Indeed it may be freely conceded that it was long known that such frames, if they could be economically produced, would be very desirable and valuable in the very position they have been used by Mosler or his company since the Mosler invention, and also that it was very desirable to make the outer sheathing or cover of the top, bottom and sides of the safe of a single sheet, and thus avoid the numerous joints which were unavoidable in the construction of the ordinary safe, and through which the silicic acid of the filling would escape and eat away the paint, thus marring the appearance of the safe.

Appellant is claiming that Moses Mosler was the first one to devise an economical method of forming such angle bar frames. That he was the first one to invent and introduce to the public a round cornered

safe constructed, or built upon such frames, and a sheathing or cover of a single piece secured around such frames, or angle bar frames of any kind. That he was the first to invent and construct a safe upon round cornered angle bar frames having a sheet of metal bent around the top, sides and lower corners of these frames, and a removable bottom seated upon bars secured to the edges of this sheet so that the safe could be conveniently filled after it was finished.

The alleged anticipations do not show or suggest a single feature of the inventions specified in the claims of the Mosler patents or either of them.

SKIDMORE'S ENGLISH PATENT.

This describes sections of some kind of bent angle pieces which are dove-tailed into the burglar-proof plates of a safe to prevent the prying of the frame from the door, and to interpose an obstruction to the entrance of wedges. It forms the inner jamb or ledge against which the door closes. It contains not the slightest suggestion of Mosler's invention, and no witness testifies that it does. The only witness asked about it by respondent's counsel is the witness Rippe, a stockholder and officer of respondent's company, and he only testifies that it contains sufficient information to enable a mechanic skilled in this branch of art to produce the "Skidmore model," and this in answer to a leading question properly objected to. Question 10, p. 250, Record.

In the prosecution of Goehler's applicatian which was in interference with Mosler's application, this same Skidmore patent was cited against the claim now sued

upon, and Mosler, Bahmann & Co.'s counsel succeeded in convincing the Examiner that the reference was not pertinent. And to convince the examiner produced an affidavit from this same witness, Rippe. (Record, p. 295). Skidmore's patent shows simply "a protecting corner piece for safes," and this, it is admitted in Mosler's patent, was old.

The McFarland design patent has not a single feature of Mosler's invention, and no witness swears that it has. There is no description setting forth how the safe is constructed. It is asserted in the specification of this patent that "the rounded *jointless* corners are the distinguishing features of the design." There is not one word of testimony to prove that such a safe ever was, or could be made.

Neither applicant's safe nor the infringing safe has such jointless corners. Jointless corners could only be formed by casting. The drawings show angle bands around the front and back of the safe, which are connected by longitudinal bars or plates. It shows a frame built around the safe proper, if it shows any thing. This is the reverse of what is shown, described and claimed in Mosler's patent and embodied in the infringing safe.

The St. Louis Safe has simply the old, flat metal frames, with the corners ground off. No angle bar frame is used in its construction. The safe was a failure. It never went into general use. No one testifies that it did.

It was known long before Mosler applied for the patents here in issue, that a round cornered safe with

a single sheet bent around the front and back frames was very desirable; to use a hackneyed expression it was indeed "a long felt want." And many efforts were made to supply this want. Mosler himself was one of the first to undertake the task, and had a machine made to bend the sheets for just such safes as the St. Louis Safe, Exhibit Goehler's Interference, Record p. 88. But few of these were made because no means had then been invented or discovered of making them economically and practically. They were, like the St. Louis Safe, abandoned experiments. Had such safes been a success respondents would not have failed to put on Waslauch the maker, or some safe maker to testify to their practicability and the extent of their use.

These are all of the exhibits set up in anticipation of the Mosler inventions. As before said, not one of respondent's witnesses is asked if either or all of these alleged anticipating devices would suggest to a skilled mechanic the inventions upon which Mosler obtained his patents, or would instruct, or suggest to, such mechanic how to construct the patent safes made by both parties to this suit. Respondent's counsel well knew that no mechanic, not even the poor stick, Hurst, who could not keep a situation any place long, would stultify himself by answering such question in the affirmative.

Much is said about round cornered messenger boxes, which are relied upon to anticipate the Mosler inventions. No sample of this is introduced in evidence, although respondent's counsel was challenged to do so. See objection to Re. Q. 37, Record p. 266.

Hurst, however, states, in Ans. 15, p. 257, what they are. "On the express safes there was a sheet of iron out of one piece, and the frames upon the outside." In other words, they were light sheet metal boxes with protecting corner or edge pieces fastened around them and held together by bands, in which ring or rings were secured for convenience in carrying them in the hand.

Hurst also states in the same answer how the alleged anticipating safes were made:

"The fire-proof Safes were panel safes made out of pieces."

No sample of these are produced.

There is simply an unfair attempt to make this witness Hurst, by leading and suggestive questions, say that some safes resembling the improved patented safes were made at Hall's Safe Works, and that such safes were quite common. He is squarely contradicted by Mosler, whom respondent saw fit to make its own witness, (XQ. 27, Record p. 264).

By witness Sargent, who was with Hall for fifteen years, (Ans. 3–5, Record p. 283–4).

By Moellers who worked at Hall's and other shops, including respondent's, and who has been working at the business over seventeen years, and was during part of the time foreman for Hall, (Ans. 4–7, Record p. 285).

There were two square cornered safes made upon angle bar frames for the Vienna Exposition. These had paneled sides, top and bottom. They were merely experimental, cost one-third more than the usual style of safe, and their manufacture was abandoned.

Respondents for some purpose not entirely clear, endeavor to prove that it is impracticable to bend angle bars after they are cut out as described in the patents to both Mosler and Goehler without heating the iron. This is not true, but if it were it is not material. There is no limitation in Mosler's patents requiring the bars to be bent either hot or cold. Indeed there is nothing said upon the subject in Mosler's patents. Whether the bars should be bent while hot or bent while cold would of course depend upon the character of the metal, and might well be, as it is, left to the discretion or judgment of the mechanic.

It is certain that the bar cut out as described and claimed can be bent, either hot or cold, much more easily than it could by any method known prior to Mosler's invention, and that so cut out and bent it obviated the necessity of forging or "staving up" the metal, thus avoiding blacksmith work.

When the bar is bent hot the joints are of course welded by the act of bringing the edges together making a "but weld" if the metal is at a welding heat, or a lap weld by slightly overlapping or scarfing the edges as respondent claimed to have changed after the bill of complaint was filed.

If it were a fact that the bar could not be conveniently bent cold and such fact, if proven, would effect the claims of Mosler's patents, still such defense comes with a very bad grace from respondents.

Mr. Hintz, Mosler, Bahman & Co.'s Superintendent, is a witness to Goehler's application, was with complainants when Moses Mosler made and introduced the new safes into use, he gave an affidavit in the prosecu-

tion of Goehler's case to prove that the bar cut out according to Mosler's invention could be bent cold, while the Skidmore bar could not be so bent.

Rippe and Goehler also gave affidavits to the same effect. (Record p. 294–5).

Goehler worked at The Mosler Safe and Lock Co.'s Factory for some months after the new safes were first made. The Mosler Safe and Lock Co. were making and selling more than one hundred safes per week before Mosler, Bahmann & Co. bribed him to leave them. (Record p. 97).

The affidavits as well as the applications for the Goehler patents introduced by respondents were made three months after this time. (Record p. 274–78).

Yet Goehler's patents lay particular stress upon the fact that such angle bars for safes could and should be bent cold.

Certain models were introduced by respondents for the purpose of showing the method employed by defendants for forming the angle bar frames upon which the safes which were made subsequent to the filing of the bill of complaint for the evident purpose of showing that at the time the testimony was taken respondents were heating their angle bars before bending, and then welding the joints.

Respondents also prove by Thorwarth and Mosler that complainants had been doing the same thing, in fact practicing bending both hot and cold, long before respondents commenced to make their safes. (Thorwarth's Ans. 5–9, Record 272. Mosler's Ans, 4–8, Record p. 260–1).

Mosler's invention provides a cheap, convenient and reliable means of bending the bars and forming the frames which constitute the skeleton of his safe. The specifications of the Mosler patents set forth the steps necessary to accomplish this result. If the iron is of good quality the bars can, by his method, be bent quite as easily cold as hot. Even had the Mosler patents mentioned bending cold as the preferred way of forming bars (which they do not) they would not be evaded by a mechanical expedient so well-known as heating.

If the claims of the three patents sued upon disclose patentable inventions, in view of the state of the art as disclosed by the record, respondent infringes each and every one of them. This is apparent from the Exhibit G, respondent's manufacture. It is sworn to by complainants' witness, Hemler, and not denied by a single witness called on behalf of respondent, and it is tacitly implied in the opinion of the Circuit Court dismissing the bill of complaint.

The real and only question then to be considered is: Do these claims set forth patentable inventions?

The three patents are really but divisions of a single application, and as the Court below said:

"For the purpose of this suit these three patents may be considered as one containing all the claims involved. As counsel for complainant suggests, the claims are for separate and distinct but not for independent inventions, at least so far as the manufacture of safes is concerned. They might have been included in one application had the patentee so chosen to present them." (Opinion, Record 309).

There are in all five claims: One to the process of producing the frames which form the skeleton of the improved safe; two claims to the frames so formed, one generic and one specific, and two to the safes in which the frames form the skeletons.

The method or process claim and the two claims for the frames, the Court below found only involved the exercise of mechanical skill, and not invention, to devise. It is not pretended that the complainant's assignor, Mosler, did not devise the peculiar method or the frame produced by it.

The combination claims, the Court find, were new with Mosler, but hold that they are aggregations and not true combinations.

"The complainant was the first to employ the combination claimed, in the manufacture of round cornered safes, but the change from square cornered safes was only a change in form The combination is nothing more than an aggregation." (Opinion, Record p. 310).

The Court clearly erred upon both of these points.

THE METHOD, OR PROCESS CLAIM.

This "consists in cutting away a portion of one web by a cut which severs the two webs at their junction for a distance equal to the arc of the corner to be bent, and removes sufficient metal in front of the single part of the uncut web to permit the same to bend to the desired angle, and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described."

The peculiar shape of the cut in one web which per-

mits the other to bend around to the desired curve is the essence of the invention.

Triangular pieces had been cut out of one web prior to Mosler's invention resembling the outer opening C of Mosler's bar, but the other step, "severing the webs at their junction for a distance equal to the arc of the corner to be bent," forming the inner opening D, had never been taken prior to Mosler's invention. Without this inner opening no practical safe frame can be made economically. With it the manufacture of improved round cornered safes was made practicable. That was a result frequently attempted before Mosler's invention, but never accomplished.

It will be found in all the cases cited by respondents, as well as those referred to in the opinion of the Circuit Court to defeat the Mosler patents, that the patentees or alleged inventors produced nothing new; that each element of their respective combinations was, separately considered, old, and that all of them, or their well-known mechanical equivalents had been previously combined. In short, that what these alleged prior inventions had produced required only good judgment such as might naturally be expected of any one familiar with the art to which the particular machine, device or structure related, at the time the supposed invention was made.

Thus, in Hailes vs. Van Wormer, the Court says: "All of the devices of which the alleged combination is made are confessedly old. No claim is made for any one of them singly as an independent invention."

And speaking of the defendant's stove says: "The

complainant's combination is a different thing. It has a greater number of constituent elements. It consists of the devices used by the defendants, together with others they do not use, and the result of the entire combination is the production of a stove differing very materially from that of defendants. We have said that the new results claimed, whatever they may be, are not the production of the combined devices common to both stoves."

There was no infringement in this case, the combinations were different.

In Reckendorfer vs. Faber there was no new element, and more than this, there was no conjoint action. Says the Court: "In the case we are considering the parts claimed to make a combination are distinct and disconnected. There is not only no new result, but there is no joint operation. When the lead is used it performs the same operation and in the same manner as it would do if there were no rubber at the other end of the pencil. When the rubber is used it is in the same manner, and performs the same duty as if the lead were not in the same pencil. A pencil is laid down and a rubber is taken up; the one to write and the other to erase. A pencil is turned over to erase with, or an eraser is turned over to write with. * * There is no relation between the instruments in the performances of their several functions, and no reciprocal action, no parts used in common."

This case differs radically from the one at bar. All parts of the Mosler structure are combined to produce a single result, a perfect safe. No part of his structure is capable of use separtely. Cut the pencil in two and

you still have a good pencil and a good eraser. Remove any element of appellant's device, and you have nothing capable of use. Each part of the pencil was old. The peculiar angle bar frame of Mosler was new. All parts of Mosler's combination co-act to produce the new structure, and the new structure is better than any theretofore produced, and it is produced at a less cost.

These facts are abundantly proven, first by the desperate efforts of defendant to appropriate the invention to itself, and, when it failed by legitimate means to do this, then by its efforts here to make the invention of Mosler public property, that, not being able to appropriate this valuable invention to itself, the field may be declared common property, that it may at least enjoy the benefits of Mosler's invention in common with the general public, and not be compelled to go back to the old inferior safe it was engaged in manufacturing before Mosler introduced his invention to the public and applied for the patents here in suit.

Pickering vs. McCullough is to the same effect. Each and every element in the Nimmo patent was old, and all had been prior to his invention combined to produce the same result. Had Nimmo been the original and first inventor of a single new feature or element in his supposed combination, or of any new method or process which called into existence the inventive faculty, had he, in other words, produced any thing which could not or might not have been produced by any one skilled in the art to which his invention related, without the exercise of invention, or, had he done any thing more than what he did, that is, take

out one well-known element of a prior combination and substitute for it another equally well-known element to accomplish the same result, in substantially the same manner, then the case of Pickering vs. McCullough might have been in point here. But Nimmo did nothing of the kind. All he did was to substitute the Salvetat rib in an old combination, or, as the Court tersely puts it: "This rib Nimmo substituted for the old one in the same combination, and this is the whole of the invention. Upon the principle stated there is no invention in it."

There is also this further suggestion in relation to these cases which is of the utmost importance in rightly understanding them, and which the trial Court overlooked or ignored. The doctrine in these cases applies more particularly to the case of a combination of devices in a machine, the object of which machine is to perform some operations upon matter, as for instance, a stove, for burning fuel, a pencil and eraser to write or erase writing, a machine for forming crucibles. As Mr. Justice Hunt says in Reckendorfer vs. Faber:

"The article presented is for the performance of mechanical operations, to produce mechanical results, and is a mechanical instrument as much as a brush, a pen, a stamp, a knife, a file, or a screw. Whether it is styled a manufacture, a tool or a machine, it is an instrument intended to produce a useful mechanical result, and the question presents itself: Does it embody any new device, or combination of devices producing a new result."

We are here dealing not with a machine that is to

perform some operation upon matter, and which is composed of elements co-operating with each other to perform some effect upon matter, but we are dealing with a structure, a new article of manufacture, composed, it is true, of several elements or parts in combination, but still to be regarded as a whole so far at least as the combination claims are concerned.

Now, all that is required with reference to the determination of the validity of the combination claims, even admitting, which is not the fact, that each element separately considered, was old at the date of Mosler's invention, is: Were the same elements all combined in one structure previous to Mosler's invention? If not, then is the new structure an improvement upon what was old, and did it require invention to produce it?

And if the new structure embodies in its construction a new element or a new process, then "The process detailed is thereby made as much a part of the invention as are the materials of which the product is composed." (Smith vs. The Goodyear Dental Vulcanite Co., 93 U. S. 486).

As to whether an assembling of parts in any case is a mere aggregation or a legitimate combination seems, from a careful consideration of the reasoning of the Supreme Court, to depend upon two facts: First, Do the several elements enumerated in the claim co-act or act in succession to produce or tend to produce an unitary result, if it be a mechanical contrivance or the result aimed at be a mechanical result; or do the several elements combine to make a complete structure, if the thing aimed at be a new or improved article of

manufacture? And this question being answered in the affirmative, then: Second, Did the production of the device or structure involve the exercise of the inventive faculty to produce it, or was its production only what might reasonably be expected of any mechanic skilled in the branch of the art to which the particular device or structure relates? If both of these questions can be answered in the affirmative then the combination is legitimate and the claim for it is valid.

The only question in this case is then: Did the production of the new safe of appellant, in view of the state of the art as it existed at the date of Mosler's invention involve the exercise of invention, or was its production only the result of mechanical skill? For it is plain from an examination of respondents' manufacture Exhibit G, that it is the structure set forth in the claims sued upon. The answer of respondents and the stipulation admit this fact.

The Circuit Court, while right on most of the facts, was wrong on the law applicable to them. The opinion says:

"The complainant was the first to employ the combination claimed in the manufacture of round cornered safes." The proof is overwhelming on this point, and it is admitted in respondents' answer, but the answer asserts that the judgment of the Patent Office finding Mosler the first inventor "was rendered, not because the proof showed Mosler to have been an inventor, but because said Goehler having made the *invention in question* while in the employ of complainant, and being then in the employ of this respondent, it was not

deemed equitable that the ownership of the patent should be in any concern other than that in whose shop the *invention* had been made."

The statement misrepresents what the officers of the Patent Office did as the decisions of the Examiner of Interferences, and the full Board of Examiners in Chief will prove. (Record p. 31–34).

ESTOPPEL.

But the admission under oath that an invention had been made in the production of the devices in interference is true, and binding upon respondents. The respondent also in its answer justifies its infringement under letters patent granted to Goehler for the same thing, or a mere mechanical modification of one of the elements of Mosler's combination. This is also evidence that what Mosler did involves invention, as His Honor, Judge Wallace, said in a recent case almost parallel with the case at bar:

"The improvement may not have involved a high degree of inventive faculty, but its utility is attested by the fact that the Wight Fire-Proofing Co. have adopted it, and it hardly lies with that Company, the real defendant here, while justifying its acts under its own patent for the same thing, to insist that there was no patentable novelty in this improvement." (Fryer vs. Mutual Life Insurance Co., of N. Y., 30 Fed. Rep. 787).

Respondents by their own acts are estopped to deny the novelty, utility and patentability of the inventions sued upon, which inventions it attempted to appropriate by letters patent, and failing in that, after a

fiercely contested litigation in the Patent Office, instituted by itself, and, after its institution, having it dissolved in order to add the very claims now sued upon, "And thereby producing an issue that will dispose of the whole case." (Record p. 300).

And then, after acquiescing in the decision of the Board of Examiners in Chief, waiving its right to appeal to the Commissioner, continued and still continues to pirate the invention it sought to obtain by bribery, perjury and subornation of perjury.

Says Judge Nixon in Greenwood vs. Bacher:

"The decree of the Patent Office on the interference doubtless concludes the defendant as he has not thought proper to appeal from the same after submitting himself to the jurisdiction. * * * If one with a knowledge of the state of the art surreptitiously attempts to appropriate to himself what he knows does not belong to him, he should be estopped, when his fraud is found out, from interposing such a defense, especially against a person whom the Patent Office has decided as against his claim, to be the original and first inventor." (Greenwood vs. Bacher, 1st. Fed. Rep. 856).

Peck vs. Stowe, 2d Fed. Rep. 688.

Hanford vs. Westcott, 16th O. G. 1181.

Holliday vs. Picard, 12th Fed. Rep. 147; 22d O. G. 420.

U. S. & F. Salamander Felting Co. vs. Asbestos Co. 18th Blach, 312.

Shuter vs. Davis, 16th Fed. Rep. 564.

"It is an undoubetedly settled law that a judgment of a Court of competent jurisdiction upon a question directly involved in one suit is conclusive as to that question in another suit between the same parties." (Russell vs. Place, 94th U. S. 606).

Practically every question in this case was before the Patent Office Officials and determined by them before and during the time the interference suit was pending between these same parties. The decision of the Officers of the Patent Office, even if not entitled to the force of *res adjudicata* upon questions brought directly before them, and which they are appointed to try is at least entitled to the respect of the Courts, and should not be reversed except upon most satisfactory proofs. (McComb vs. Ernst, 1st Woods, 195. Crouch vs. Spear, 6th O. G. 187).

Respondent has introduced in evidence the records in the interference case. (Record p. 39 to 247 inclusive).

We claim that these records are not competent for the purpose of re-opening the questions decided in the interference case. All the issues in that case were fully and fairly tried and acquiesced in by the respondent.

The decision of the Commissioner of Patents it is admitted is not final in an interference case. It may be reviewed by Courts of the United States in a proper case.

This is not such case. Had Mosler, Bahmann & Co,, appealed to the Commissioner from the decision of the Board of Examiners in Chief, it might then, had

the decision been adverse, have filed its bill in Equity under Section 4915, Revised Statutes, and then tried the question over again. But the decision of the Board of Examiners in Chief not appealed from within the time fixed by law, is just as binding between the parties and privies as the decision of the highest Court.

The interference was instituted by the respondent in just the manner its counsel requested. All the issues in this suit were at his request made issues in that case in order, as then stated by him, that all issues might be finally settled. These issues were accepted in good faith by Mosler, fully and fairly tried, properly decided, and, we claim, finally and forever settled.

The Records, therefore, of the interference case are only competent to prove the validity and value of the inventions sued upon. Competent to show the desperate and dishonest efforts of respondents to pirate the inventions to itself. Competent to show, by respondent's officers and by Goehler, its assignor, that the inventions were immediately approved by the public, adopted by it, and went into general use, and completely superseded the old style of safe which had been manufactured by both parties to this suit prior to the inventions of Moses Mosler. This is the highest evidence of invention.

Smith vs. Goodyear Dental Co., 93 U. S. 486.
Hicks vs. Otto, 19 Fed. Rep. 749.
Shuter vs. Davis, 16 Fed. Rep. 564.
U. S. Stamping Co. vs. King, 17 Blach, 55.
Hoe vs. Cottrel, 17 Blach, 546.
Holliday vs. Pickard, 12 Fed. Rep. 147.

Valve Co. vs. Crosby, 113 U. S. 157.
Loom Co. vs. Higgins, 103 U. S. 580.

But if the interference case had been tried again in the Circuit Court the result must have been the same. Mosler, Bahmann & Co. well know this, or they would have appealed to the Commissioner from the Board of Examiners in Chief The interference records prove Mosler to be the true and first inventor. Goehler, respondents' assignor, admitted it over his own signature, and his assignee is bound by the admission. It was freely made, and made at a time when he had no inducement to be dishonest. It was made a few days before he was bribed by respondent. His admission is printed at p. 100 and 132 of Record, and is as follows:

"CINCINNATI, OHIO, February 11, 1882.

"MOSES MOSLER, ESQ.—

"*Dear Sir:* As it has been reported that we have laid some claim to the invention in round cornered safes, made with a bent angle bar, such as you have filed your application for letters patent upon, we desire to say to you that such statements are without foundation, and now say to you that we fully recognize that you are the inventor of such improvements, and that all we did was to construct the safe under your supervision and in accordance with your directions.

"MICHAEL HEMLER,

"G. J. H. GOEHLER."

"Witness, C. J. Graeser."

That the merit of the new safe was immediately recognized by the public is abundantly proven by the evidence:

"Immediately upon its introduction the sales were more than one hundred per week." (Goehler's answer 87, Record p. 97).

"Times were very dull at Mosler's factory prior to the invention. They had to lay off every week until the new round cornered safes were made, but ever since then they had plenty of work." (Moorman's Ans. 16–19, Record p. 117).

"Since the introduction of the new safe in respondent's shop none of the old style have been made except upon special order." (Rippe, XA. 31 and 32, Record p. 253).

Mosler, called as a witness for respondent, says: "The Mosler Safe and Lock Co. has not made any old style safes, nor has it had any demand for them since the introduction of the new safe."

A. 24. "Not a single instance that I am aware of have we had a call for the old style safe, as inquired about; it superseded the old form of safe." (Record p, 263).

"X. A. 27. "I may safely say that our sales were increased at least one-third over the sales of safes constructed by the old method." (Record p. 264).

Hurst also states that he heard that the Hall Safe and Lock Co. are now making their safes on the new plan:

R. A. 33. "They make them round cornered now; that's what I hear; I have not been there lately."

Moeller states, A. 12, Record p. 286: "There were no more made after the old stock was worked off, except one square cornered welded angle frame back and front had to be taken off and round cornered angle bar put on; the square frame is in the factory yet."

It is also clear from the testimony that prior to the introduction of the new safe no safe makers in the United States ever made safes like the one here in suit. (Mosler's testimony).

X. Q. 27. "Prior to the introduction into use by your company of the inventions described and claimed in the patents here in suit, were there any, and, if so, about what number and proportion, of round cornered safes made upon angle bars of any description made and sold by any safe makers in the United States, so far as you know?"

A. "I do not know of any safes having been made and sold, having round corners with angle bars, by any one previous to those made by the Mosler Safe and Lock Co."

X. Q. 28 "Do you know of any one in the United States who advertised, or pretended to make safes which were made upon round cornered angle bar frames, such as the safes made by your company, in accordance with your invention, prior to the time your company commenced the manufacture and sale of safes emboding the inventions described and claimed in the patents here in suit?"

A. "I do not.

X. Q. 29. "If such safes had been made and sold, or if any safe company in this city or in the United States had been engaged in their manufacture and sale,

or if such safes had been known in the market, would you, from your position as President of the Mosler Safe and Lock Co., have known of the fact?"

A. "From the knowledge and experience that I have had in the safe business I think I would."

X. Q. 30. "Please state what knowledge and experience you have had in the safe business."

A. "I have been connected with the safe business for the past twenty years; first with Diebold, Bahmann & Co.; then with the Union Safe Factory; then with Mosler, Bahmann & Co., and Mosler Safe and Lock Co. for the past nine years. My experience, while with Diebold, Bahmann & Co. and the Union Safe Factory, was quite limited, but with Mosler, Bahmann & Co. I acted in the capacity of assistant to my father, who was president and manager of that Company, and with the Mosler Safe and Lock Co. as manager and president since they commenced business. Besides, I have always paid special attention to the mechanical and iron departments, and have introduced all the improvements used by this company."

And A. W. Sargent:

A. 2. "I commenced in the safe business in the fall of 1864 or 1865 with Hall's Safe and Lock Co., and was with them until the fall of 1877. I have since that time sold safes for the Diebold Safe and Lock Co, of Canton. I was with them about a month, and then I sold safes for Hall's Safe and Lock Co. on commission. Since then I have been selling safes on commission. I have sold of the Mosler, Bahmann & Co.'s, and last January, February and March I sold safes for Farrell & Co., of Philadelphia.

Q. 3. "Are you familiar with the round cornered safe having angle frames in front and back, with a sheet of metal bent around them to form a curve, such as are sold by the Mosler, Bahmann Co. and the Mosler Safe Co. since the early part of 1882?"

A. 3. "The first of those bent corners I have ever seen was those of the Mosler Safe and Lock Co. I can not state with certainty if it were in 1882 Mr. Mosler called me out and showed it to me; it might have been as long ago as 1882. I have seen them since made by the Mosler-Bahmann Co."

Q. 4. "Were any safes of that character in the market so far as you know, prior to the time you were shown the round cornered safe by Mr. Mosler?"

A. 4. "No fire-proof safes I have ever seen."

Q. 5. "During the time you were engaged by the Hall Safe and Lock Co. or by Joseph L. Hall, were any fire-proof safes made and sold having bent angle bars forming the front and rear frames of the safe, either square cornered safes or round cornered?"

A. 5. "I do not know of any having been for sale made in that way."

Q. 6. "From your experience and observation, which do you regard as the stronger and better safe, the old square cornered safes, such as made by the Hall Safe and Lock Co. and all other manufacturers so far as you know, or the round cornered safe on bent angle bar frames, having a sheet bent around forming the outer cover, such as made by the Mosler Safe and Lock Co. and Mosler-Bahmann Co.? And please give reasons for your opinion."

Objected to as immaterial.

A. 6. "I consider the round cornered safe a great improvement over the old style; I consider that the one continuous plate going around over the corner makes it stronger. On account of the two plates curving, coming together at the corner, they will not warp in fires. The continuous welded iron bar going around the front and back of the safe also makes it a great deal stronger; I have seen cases in the old style safes without the welded bar where the backs have come entirely off; the solid welded angle bar prevents that, in my opinion."

Q. 7. "How do round cornered safes sell in the market compared to the old style safes in use prior to their introduction?"

A. 7. "My experience is that parties prefer the round cornered safe where they have been properly shown and explained; they have told me it was a big advantage and they would not have any other safe." (Record p. 283 and 284).

Moeller says there were no such safes made at Hall's Safe and Lock Co. while he was there, and he was there from the war times until 1879 or 1880. There were only two square angle frames made for the Vienna Exposition. "Were packed, but never sent. Can't tell what became of them. These safes were made the old way with paneled sides, back and top, and were square cornered." (A. 4–8, Record p. 285).

Since Mosler's invention one such safe was made by Mosler Safe and Lock Co., and the square cornered welded angle frame back and front had to be taken off

and a round cornered angle bar frame put on. The square frame is in the factory yet. (A. 12, Record p. 286).

It is evident from the testimony of this witness and Sargent that no safes even like this were made at the Hall Safe and Lock Co. except the abandoned experiments intended for the Vienna Exposition of 1873, until after Mosler's invention. And that what Hurst saw, if he saw anything, was after Mosler's safe went into use. Hall no doubt saw, after Mosler's new safe went into use, that he must do something to stem the tide that had set in in favor of it, and to do this attempted to revive the old Vienna Exposition experiment, but as that did not take well, only about one in eight being so made, he commenced to infringe the Mosler round cornered safe, as Hurst says in his answer above quoted.

This old square cornered safe, with its paneled back, sides and front, like the "Exhibit St. Louis Safe," which was first made by Mosler, was nothing more than an abandoned experiment. Neither of them was the safe described in the Mosler patents sued upon. They were tried and found wanting. That neither suggested the inventions in issue is conclusively proven by the fact that their originators, Hall and Mosler, both threw them aside as worthless. And both are alive to every improvement in the manufacture of safes. The former having been many times before this Court as a party to patent suits upon inventions relating to safes.

These old safes, even if they partially accomplished the results of the new safe of Mosler, would only

strengthen the evidence that what Mosler did involved the exercise of invention, and that his claims are valid.

The language of this Court, in Valve Co. vs. Crosby applies exactly:

"Richardson's invention brought to success what prior inventors had essayed and partially accomplished. He used some things which had been used before, but he added just that which was necessary to make the whole a practically valuable and economical apparatus. The fact that the known valves were not used, and the speedy and extensive adoption of Richardson's valve are facts in harmony with the evidence that his valve contained just what the prior valves lacked, and go to support the conclusion at which we have arrived on the question of novelty."

After an invention is made it is easy to see how any one might have selected a number of old elements and combined them in the same way, but "that wisdom which comes after the event is much to be distrusted."

BURDEN OF PROOF.

"*The burden of proof of want of novelty rests upon him who avers it, and every reasonable doubt should be resolved against him.*" It follows from this declaration of the Supreme Court, and has been expressly decided by several Circuit Courts, *that novelty can only be negatived by proof which puts the facts beyond reasonable doubt.* Under this rule a patent enjoys the same presumption of novelty that an unconvicted prisoner does of innocence. Unlike most civil titles it is not liable to be overthrown by a mere preponderance of evidence."

Seymour vs. Osborne, 11 Wal. 516.

Walker on Patents, Sec. 76, and cases there cited.

Bates vs. Coe, 98 U. S. 31.

Imhauser vs. Buerk, 101 U. S. 647.

Respondent has introduced a single witness to overcome the *prima facie* case made by the patent. The single witness, Hurst has produced nothing showing or suggesting the invention. His testimony is uncertain, contradictory and vague.

The method or process claim of patent No. 283, 136 is a valid claim. The method described produces a new and useful result, and the steps of the process were never before practiced. The steps consist:

1. In forming the opening C, in one web of the angle bar. This step, the proof tends to show, had been practiced before in the experimental safes of Hall, in the protecting corner or edge pieces for the little messenger boxes, and is described in the Skidmore patent.

2. Forming the opening D. This step had never been taken by any one prior to the invention of Mosler. This fact is not disputed or questioned by any witness in the record. The only defense really interposed to the validity of this claim is that the taking of this step did not involve invention. This defense was made at the hearing and adopted by the Judge, although there is not one word of testimony in the record in support of the assertion in the opinion that the method of determining the line of cutting was old. The whole record, as well as the interference case proves exactly the contrary. It was on this very point the contest in the Patent Office was principally made.

The only perceivable difference between this case and the case of Lawther vs. Hamilton et. al., (21st

Fed. Rep. 811), decided by Judge Dyer, is that in that case the inventor omitted one step in the prior process, while the inventor here added one step to what was before known, which step was unquestionably new and of his invention. "No new step was discovered by the patentee" (Lawther). The lower Court dismissed the bill of complaint.

This decision was reversed by the Supreme Court, decided January 9, 1888. The reasoning of that case applies exactly here. (Lawther vs. Hamilton et. al., 42 O. G. 487).

We might say here, as in that case, the process consists in a series of acts done to the bar; it is a mode of treatment. This is a real improvement in the mode of bending angle bars. Why should it be doubted that such a discovery or invention is patentable?

Mosler, having invented the method of forming the bar, was entitled to the bar so formed, and to the new combinations he invented in which this bar or frame, or any frame substantially like it, might be used.

No bar like the bar of his claims 1 and 2 in the patent 281, 640, and no safe like the one set forth in his 3d claim of the same patent, or the single claim of his patent No. 273, 585, was ever produced prior to Mosler's invention.

The testimony abundantly proves the novelty, utility and value of the invention in suit.

The decree of the lower Court was erroneous and for the reasons above stated appellant asks that it be reversed, and a decree ordered as prayed for in the bill of complaint.

GEORGE J. MURRAY,
Counsel for Appellant.

24-354
1913 54

Supreme Court of the United States,

No. 248.

THE MOSLER SAFE & LOCK CO.

VS.

MOSLER, BAHMANN & COMPANY.

BRIEF FOR APPELLEE,

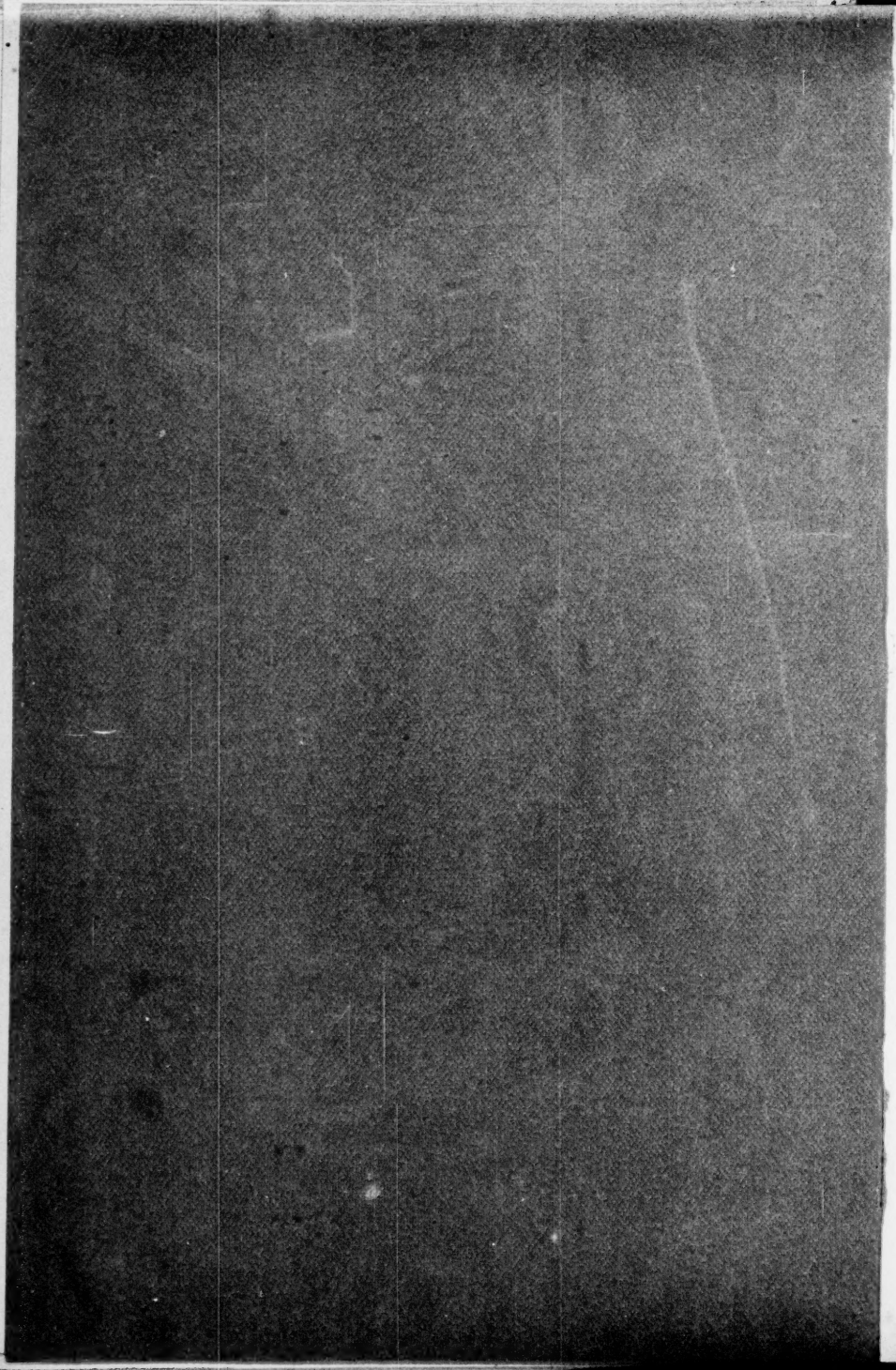
AND

REPLY TO APPELLANT'S BRIEF.

JAMES MOORE,

APPELLEES' COUNSEL.

C. Souer & Co., Printers, Cincinnati.



May It Please Your Honors:

The bill of complaint alleges the grant of the three letters patent "Complainant's Exhibits" A, B and C to one Moses Mosler, their assignment to the appellant, and infringement by appellee of all the claims in said patents.

Generally stated, the opinion of the court below states our defences.

Perhaps a short statement of the history of the controversy may aid in economising the time of the Court.

Prior to the commencement of this suit there was an Interference Proceeding before the Patent Office between said Moses Mosler and George J. H. Goehler. This Interference was limited to complainants patent "Exhibit B," and an application for patent by Goehler, which latter, as the result of the Interference, was rejected. This rejected application is in evidence as "Respondents Ex. Goehler File and Contents," and printed at p. 288 et seq., so that neither the Mosler patents Exhibits "A" nor "C;" nor "Respondent's Ex. Goehler patent No. 1," (printed No. 7) p. 273; nor "Respondent's Ex. Goehler's patent No. 2" (p. 275) were embraced in the Interference.

The appellee is the assignee of the Goehler patents, and the testimony taken in the Interference has become part of the record of this cause.

When your Honors have become familiar with the

defences to these patents, it may occur to you to ask what necessity there was for putting the Interference record into this case?

It will be observed that the opinions of the Examiner of Interferences, and of the Board of Examiners in Chief, were offered in evidence by complainant, (Rec. p. 28 et seq.) whereupon respondent offered the testimony in the Interference, so that if the Court should be asked to read those opinions for any purpose, the respondent would not have to rely upon assertion merely, if it became necessary, in the contingencies of the cause, to explain these opinions.

This Interference, as above intimated, was decided in favor of Mosler by the Examiner of Interferences, and subsequently, upon appeal, by the Board of Examiners in Chief, from whose decision Goehler did not appeal.

Under this state of fact appellant insisted in the Court below, and may do so here, that Goehler would be estopped from ever after contesting the question of invention as between himself and Mosler; and as appellee was the assignee of Goehler, it was further insisted that appellee was also estopped from contesting this fact.

This estoppel, it is said, arises from the acquiesence of Goehler in the decision of the Board of Examiners in Chief; and the charge of acquiesence, in its turn, is based upon the fact that Goehler did not appeal from the decision of the Examiners in Chief to the Commissioner of Patents in person.

I do not see that this question of acquiesence, or estoppel, can assume such significance in this cause as

to justify formal argument upon it here, but will say, in passing, that it is customary for the Courts when passing upon motions for *preliminary* injunctions, applied for by the successful party to an Interference against the unsuccessful one, to hold for the *purpose of such motion* that the decision of the Patent Office is conclusive, much as they permit presumptions, arising from matters *in pais*, to have more or less influence upon their decision of a question, or finding of a fact, upon which the proofs can not be taken before they are compelled to dispose of such motion. In addition to this, there are some opinions upon final hearings that advert to this subject without, apparently, the Court having had its attention called to the distinction between a preliminary hearing and a final one; between the persuasive or probative force and effect that a Court may give to relevant transactions, admitted, or proved, when acting in the exercise of its discretionary powers, for the preservation of the subject of a litigation, pending the preparation of the cause; and the limitations placed upon a Court's action, by the rules of law, when it comes to finally dispose of such litigation, after the proofs are taken.

To say (in view of the Constitution of the United States, Art. 3, Sec. 1: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." * *) that the action of an administrative officer, although clothed with *quasi* judicial authority, *i. e.*, judicial power appropriate for the performance of his special duties, should be conclusive of a judicial question; and that the Courts—

the respositaries of all judicial power under the Constitution—should have no right to go behind such decision, is, it is submitted, a very strange proposition. Nor could it be said for an instant that such vacation of their functions by the judiciary could be justified, because it is an estoppel acting upon the party, and not affecting the Courts; for, if that distinction were applicable the Courts could never examine or re-examine that question, between those parties, if indeed between any, unless the question first passed by regular appeal through all the Patent Office Boards: Examiner of Interferences, Board of Examiners in Chief, and Commissioner of Patents, and then a bill in equity under Sec. 4915, Revised Statutes, were filed, even if they could then; thus making the judicial power of the Courts depend upon the interest, whim or financial ability of such litigant.

If there be authority, legislative or judicial, sufficient to place such an impediment, or condition to the exercise of judicial power by the Courts, then that authority can take away the judicial power of the Courts, *i. e.*, revoke the Constitution.

To say that *quasi* judicial powers must be given to certain administrative officers, like the Commissioner of Patents, to enable them to properly perform their allotted duties, seems much like a truism in the science of government—in a republican government anyway—but to add to, or infer from, that, that the Courts can not, or must not, in a proper case review such judicial action, is not only a *non-sequitur*, but is in direct contravention of our fundamental law.

These remarks are inserted as a justification for not

reviewing the cases upon the above question, in case it becomes necessary to again discuss the question of priority of invention between Goehler and Mosler.

No appeal was taken to the Commissioner of Patents because it had become evident by that time that the subject of the Interference was not useful; that is to say it had been demonstrated in practice that the alleged invention would not work—that there was no invention. The proof upon this matter is ample and undeniable, and will be adverted to in its proper place.

The testimony in the Interference was put in that appellee might contest the question of invention if necessary; and, although it was discussed in the Court below, the learned Judge did not find it necessary to a proper decision of every question in the cause that he should advert to the subject of the Interference, as may be seen in his opinion.

It is intended to brief this cause without reference to the question that was in issue in the Interference, but the record in that proceeding, so far as it has been made part of this record, will be referred to in so far as it throws light upon the following:

There are five claims in the three patents sued upon, and it is believed that a preliminary comparison of these, in the order of their subject matters, without reference to the particular patent that each may happen to be in, will aid in simplifying the controversy, *to wit*:

First Claim—Complainant's Exhibit "B."

1. "An Angle Bar for safe frames, consisting, substantially as before set forth, of a right angled iron bar, one of the sides of which is cut away, *leaving a*

curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve to form a rounded corner."

Second Claim—Complainant's Exhibit "B."

2. "An Angle Bar for safe frames, consisting, substantially as before set forth, of a right angled iron bar, one of the sides of which is cut away, *with curved cuts meeting a right angled cut, whereby the uncut side may be bent* to form rounded corners "

Claim of "Complainant's Exhibit C."

"The herein described process of bending angle irons, which consists in cutting away a portion of one web by a cut which severs the two webs at their junction for a distance equal to the arc of the corner to be bent, and removes sufficient of metal in front of the single part of the uncut web to permit the same to bend to the desired angle and to insure the edges of the opening meeting to form a close joint as the bar is bent, substantially as shown and described."

Third Claim—"Complainant's Exhibit B."

"In a safe, the combination of the front and back frames, formed of single bent angle bars having one side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet, E, bent around and secured to said frames to form the top and sides of the safe, substantially as described."

Claim of "Complainant's Exhibit A."

"The combination, in a fire-proof safe, of the frames A, sheet metal cover B, bent around the top, sides and lower corners, with bars C and lower removable plate D, substantially as specified."

The three claims first quoted (Claims 1 and 2, of Exhibit B, and the claim of Exhibit C) are for the same thing, the cut of the angle bar in so far as it varies from the ordinary miter-joint. The next quoted (Third Claim of Exhibit B) is for a safe, built upon angle bars, bent by means of the cut, which is the subject of the three claims referred to, when such safe is surrounded by a sheet metal cover, or envelope, such as used on "Respondent's Exhibit St. Louis Round-Cornered Safe," and in the thousands of express boxes in use prior to the alleged inventions, to be hereafter pointed to. So that the invention, or novelty, of this claim, if there be any, is also the special cut in the angle bar.

The last claim quoted (claim of Exhibit A) is for the combination recited in the last paragraph when such safe has, in addition, the requisite construction to enable it to be filled from the bottom, with the non-conducting material that forms the essence of a fire-proof safe, instead of being filled from the back; that is, a lower removable plate, with ledges upon which it can be secured. The black wooden model "Respondent's Exhibit A" showing this same construction, exactly as in Complainant's patent, Exhibit A, also shows the mode of construction carried on for years, prior to the alleged invention, and in all the fire-proof safes made in a safe factory adjoining appellants. So that this claim also relies for its claim to invention or novelty upon the special cut of the angle bar; unless, indeed, and this remark applies to the claim last above referred to, appellant intends to ignore the distinction between a combination and an aggregation.

From all this it will be apparent, I submit, that the special cut in the angle bar is all there is to this cause.

THE CLAIMS COVERING THE CUT IN THE ANGLE BAR ARE INVALID.

Before approaching the kernel of this subject it will be in order to point to my reasons for saying that the three claims first quoted, 1st and 2d of Exhibit B, and claim of Exhibit C, are for the same subject matter.

If your Honors now recur to p. 5 ante it will be seen that the first two differ only in the language that I have put in italics in each, the remaining language being identical, each with the other. I will place in parallel columns the italicised language of these two claims, *to wit*:

* * "leaving a curve facing the uncut side, whereby said uncut side may be bent to bear upon said curve" * *	* * "with curved cuts meeting a right angled cut, whereby the uncut side may be bent" * *

The beginning of these claims, not here quoted, points to what is done, viz., the cut, in order to produce the invention, and is the same in each; the ending also the same in each, describes the purpose, viz., a rounded corner; while the parts that differ in each, that is in verbiage, is only descriptive of the appearance of the bar after the cut.

If ingenuity can point to any distinction in the substance of these claims it has not been done so far.

The claim of Exhibit C is, in form, for a process —that is for the doing of the thing, which, when done,

forms the subject of the invention specified in the claims above discussed.

A process, or art, which it must be, to be patentable under our law, may be an operation or series of operations, performed upon materials; in which case the essence of the invention is the change or result of the change produced upon such materials; or it may be a succession of steps in an operatian, and such steps may be produced by mechanical means; but in such case the essence of the invention is not the mechanical instrumentalities employed in performing these different steps, but the relation of these different steps each to the other with reference to their effect upon the result; but this Court has never, I think, sustained a process patent for a mechanical operation, and it certainly has not done so since it decided in Corning vs. Burden, 15 How., that an operation performed by mechanical means was not patentable.

See Walker on Patents, Sec. 3, and cases cited.

But apart from that the invention intended here to be patented, whether called a process, as it is in the patent, or a rule, or otherwise, consisted in cutting and bending a piece of card-board so as to get a corner of any desired curvature, and is particularly described in the last paragraph but one, p. 24, Rec., of the patent under discussion. If now, your Honors will compare this with the Goehler patent, No. 2, p. 276 et seq., you will see that this rule, or process, is described and illustrated in the drawings, although it is done with iron, and not with card-board. This Goehler patent was granted November 28, 1882, while Complainant's Exhibit C was granted August 14, 1883, and was not

applied for until December 11, 1882. In other words, eleven days after appellant got knowledge of the Goehler patent referred to, by the arrival in Cincinnati of the Patent Office Gazette, they had an application on file for a patent for the same thing, only they had a more sonorous title, and more amplified description than Goehler, who only asked for an "Improvement in Bending Angle Irons." Upon this application Complainant's Exhibit C was granted. And neither of these as before remarked, was in the Interference, nor did Mosler, who alone had knowledge that he was applying for a patent for what had already been patented to Goehler, asked for an interference upon this application. And, although appellant's counsel is perfectly familiar with these facts, the record contains no explanation of them; unless it be that Mosler, having succeeded in the Interference upon Complainant's Exhibit B, which shows, and claims the cut in question, but gives no hint of a process, as distinguished from the cut, assumes that he is thereby entitled to a patent for a process! This assumption is obviously based upon a belief that the same invention is shown in both patents B and C.

And, no doubt, the Examiner's reason for granting the patent, Exhibit C, notwithstanding the prior grant of the Goehler patent, for the same invention, whereby the jurisdiction of the Commissioner of Patents to entertain such second application, unless for the purpose of an Interference, had been exhausted, was the same as appellant's counsel, *to wit*: That the office had adjudged that Mosler was the prior inventor of the cut.

If this reasoning of the Patent Office and counsel

be sound, it follows that two patents at least have been granted for the same invention, and whatever doubt might arise between the Goehler patent and Complainant's Exhibit B, there could be no doubt whatever that Complainant's Exhibit C, subsequent to both, and not in the Interference, was invalid.

That is, to restate this in a few words, if Exhibit C shows a different invention from the form of cut, patented, as the result of the Interference, in Exhibit B, then it is anticipated by the Goehler Patent No. 2, and Exhibit C is void; while if Exhibit C shows the same invention as was in Interference, and patented in Exhibit B, then Exhibit C is void, because the Commissioner of Patents had no authority to grant a patent for what had already been patented.

And, it may be added in passing, unless the invention secured by patent Exhibit C *is the cut in the angle bar* there is no proof of infringement of it.

THERE IS NO INVENTION IN THIS CUT.

Miter-joints in a great variety of carpenters', cabinet-makers' and machinists' work are too old for memory or history to account for their origin. It will be sufficient here to refer to the Skidmore Model, in evidence, as an illustration. It is made to illustrate the Skidmore English patent which is printed at p. 280, Rec., having been offered in evidence by appellee at Q. 8 p. 250. The witness Rippe, at the last reference, testifies that the model accurately represents the patent.

The bent angle bar, shown in the model, has a triangular piece cut out of one of its webs, as may be seen in "Respondent's Ex. Welded Round Corner

No. 1." To bend this corner it must be first heated—it can not be bent cold—the effort so to do would split and crack the iron.

When the cut shown in appellant's patents, or in any of the Goehler patents, was first devised it was believed by all that with it the angle bar could be bent cold. If this were true, then such cold bending, it was believed, would be an advantage in the saving of labor, and also, perhaps, in leaving a better surface on the iron. And it was because it was believed that this change in the form of this cut would permit this cold bending that Mosler and Goehler applied for the patents that have been referred to in the record; and it was this belief, too, upon the part of the Examiner in the Patent Office, that induced him to grant these patents

If the record shows that I am right about this, and shows also, to a demonstration, that such angle bars have not been, and could not be, bent cold, and that *for this reason* both parties to the record have ceased to use angle bars so cut, and both heat their angle bars before bending them, will it not follow that such change of form in the cut—from the triangular cut of Skidmore, and "Respondant's Exhibit Welded Round Corner, No. 1," to the cut shown in the Mosler patents—is a *mere* change of form and not patentable?

Before proceeding to point out these things I feel prompted to attempt an answer to a question that will most likely occur to such of your Honors as have read the above statements, *viz.*:

Why this litigation, if these statements are true, the thing useless, and not used or desired by either?

If there be any *intelligent* purpose in it, other than mere spite and malice, I can not tell what it is.

WHERE A CHANGE OF FORM PRODUCES NO NEW OR USEFUL RESULT, SUCH CHANGE IS A "MERE CHANGE OF FORM," AND NOT PATENTABLE.

It is not deemed necessary to give citations of authority for this proposition.

We say this change of form produced no new or useful result.

First. I desire to show the action of the Patent Office upon this question, and, in doing this, will refer to the file and contents of application for patent by Goehler, which was rejected, as the result of interference with Mosler. If it occur to your Honors to ask why I do not refer to Mosler's file for this purpose, I answer because Mosler's file does not contain the matter referred to When two applications are pending together, which the office intends to put into interference, it is customary for the office, to save double correspondence, to compel some one of them to get his papers into proper shape for the interference, and when that is done an order *nisi* is made on the other party to put his into substantially the same form. In this case the part of the correspondence to be referred to was held with Goehler's application exclusively. I refer in this matter to "Respondent's Exhibit, Goehler file and contents," (Rec. p. 288).

Goehler's application, as originally filed, contained four claims, the first three of which only are important in this connection. The first claim was for the described process of bending round corners; the second

claim was for an angle bar having one of its webs cut (any way at all) and the other web bent, so as to produce a round corner; and the third claim, which was specifically descriptive of the exact cut shown, was for an angle bar to be bent by that means. Rec., p. 292.

The office letter in reply to these, dated March 29, 1882, p. 293, is as follows: "On examination of the above case it is found that the invention set forth in the first, second and third claims is anticipated by English patent to Skidmore, No. 1,000, A. D. 1865."

On May 2, 1882, the solicitor of Goehler replied to the above letter of the office; the part of it which bears upon the said three claims is as follows, p. 294:

"In regard to the reference alluded to in said letter, it is only necessary to state that Skidmore's English patent describes an *impracticable invention*, in proof of which assertion there is herewith inclosed two samples of iron bent according to applicant's method, two samples bent according to Skidmore's patent, and affidavits from three practical metal workers *as to the worthlessness of Skidmore's process.* A comparison of these four samples will show that both of Goehler's irons have perfect and well rounded corners, while the two irons bent according to the specifications and drawings of the English patent are so torn and cracked at the corners as to be of no account whatever. It is admitted, however, that Skidmore could form a secure corner on his bar, *after heating the latter*, but this is the difficulty overcome by applicant's invention, as he is able to bend the very heaviest angle irons *without re-heating the same.*

"Therefore, as Goehler's invention enables a COLD angle iron to be readily bent, while the English patent

describes a method that necessitates the RE-HEATING of the iron, it is evident that the inventions must be dissimilar."

The following are copies of the affidavits in the file and contents referred to in the above letter:

"CINCINNATI, May 1, 1882.

"I, George J. H. Goehler, of Cincinnati, Ohio, do hereby certify that I am a practical metal-worker, and have been engaged in the business for about eighteen years. I have been engaged in the manufacture of safes both in Europe and in this country for the past fifteen years.

"The inclosed piece of angle iron designated as '*George J. H. Goehler Bending Angle Irons Exhibit A*,' was bent by myself while said iron was cold, and the fracture in the corner was the natural result of such a proceeding.

"The iron is the very best quality that can be got in the market. From my practical experience in working metal, I know that a thousand pieces of iron similar to this exhibit could be bent cold, and yet not one of them would be perfect.

"They would all crack at the corners.

[Signed.] GEORGE J. H. GOEHLER."

"CINCINNATI, May 1, 1882.

"I, Charles Rippe, of Covington, Ky., do hereby certify that I am a practical metal-worker, and have been engaged in the business for the past twenty-seven years.

"I also certify that the inclosed piece of angle iron

marked '*George J. H. Goehler, Bending Angle Irons, Exhibit B*,' was bent by myself for the purpose of determining if such a piece of iron could be bent cold.

"This piece is a good quality of iron, for which the regular list price was paid and although it was bent slowly, and with considerable care it was fractured as seen.

"From my extensive experience as a metal-worker, I know it is impossible to bend such a piece of angle iron cold, without causing it to break at the joint, and thereby be rendered unfit for use.

[Signed.] "CHARLES RIPPE."

"CINCINNATI, May 1, 1882

"I, Julius C. Hintz, of Cincinnati, Ohio, do hereby certify that I saw Charles Rippe bend the inclosed piece of angle iron, marked '*George J. H. Goehler's Bending Angle Iron, Exhibit B*,' and know the statement over his signature is correct.

"The cold piece of iron was bent very slowly, and before the corner had been carried two-thirds of the way around, the metal commenced to break.

"I have been engaged in metal-working for more than ten years, and know the result of attempting to bend angle iron while cold, is to break at the corner.

[Signed.] "J. C. HINTZ."

The emphasis, by italics, etc., are in the original. It will be observed that while the above letter speaks of models, or exhibits, being sent to illustrate how perfectly the metal could be bent cold, by the Goehler method, the affidavits (for they are sworn to, but I

have not quoted the jurats), *are limited to showing that the pieces bent according to Skidmore's plan can not be bent cold.*

How the solicitor of Goehler came to state more in his letter than the affidavits justified, I can not say, but this I do know, that, before the crucial test of this matter, by the actual manufacture of safes, it was commonly believed that the Goehler cut would enable the bars to be bent cold.

It will appear further along that such angle bars can not be bent cold, no matter how cut.

The examiner (if we will put ourselves in his place) was then advised that the difference between the cuts of Skidmore and Goehler produced a beneficial result, it enabled the iron to be bent cold.

That, as matter of fact, the Goehler bar could not be bent cold has nothing to do with the present part of our discussion, which has reference only to the reasons that actuated the patent office in finding such difference in these as appeared to justify it in holding that that difference was patentable.

The Patent Office letter, in reply to the above, and next in order in the "file and contents," is dated May 8, 1882, (p. 296), passes the third claim, before stated, for patent, and again rejects the first and second claims upon the same reference—Skidmore's English patent.

A few words upon the reason of this action of the office: The third claim, that was passed, was for an angle iron cut precisely as shown in complainant's patent, and in the drawings of the rejected application of Goehler.

The letter of the Solicitor, in connection with the affidavits of Rippe, Goehler and Hintz, had shown

that a beneficial result had arisen from the use of that cut, as distinguished from the Skidmore cut, to wit: An angle bar cut on the Skidmore method *could not* be bent without heating, while, it was assumed, from the statement in the Solicitor's letter, that an angle bar, cut according to claim three, *could be bent cold*, hence the patentability of the third claim.

But the first and second claims were again rejected. That it may appear beyond doubt that I am accurately stating the reasons of the office, I will quote these claims (p. 292.):

1. "The within described process of bending rounded corners on one of the webs of an angle iron, for the purpose stated."

2. "An angle iron having one of the webs coved or notched, and the other web bent so as to produce a rounded corner for the purpose stated."

3. "An angle iron having one of its webs, B, coved or notched at C, c, c', D, d, d', E, and the other web, A, bent so as to afford a rounded corner, *a*, as and for the purpose described."

The first was for *bending* an angle iron (however cut) by which a round corner was produced. If this were otherwise patentable (which it was not), it was involved in Skidmore. It was not limited to a specific cut that, as was alleged, would enable it to be bent cold.

The second was for any angle bar, so cut as to enable it to be bent into a round corner—the affidavits had no application to either.

The third was accurately limited to the exact cut that, it was alleged, would enable it to be bent cold.

If the Patent Office, and the applicant, and the Solicitor, were all mistaken about this, and, as matter of fact, such bars could not be bent cold, then a grant of a patent, based upon this mistake of fact, was invalid. Or, if put in another shape, the result will remain the same. Where the alleged beneficial result, or increased utility, SOLELY *relied upon to evidence invention* disappears, or is proved not to exist, the invention disappears.

A BAR CUT AS SHOWN, AND SPECIFIED IN THE ABOVE THIRD CLAIM, AND IN COMPLAINANT'S PATENT, CAN NOT BE BENT COLD.

Charles Rippe testifies, (Q. 2-6, p. 249), that such angle bars could not be bent cold, and never were bent cold at respondent's factory. The witness was superintendent of appellee's factory, and there is nothing in the record in the slightest conflict with his testimony.

George Thorwarth was tool-maker, and fixed up machinery in complainant's factory, when complainant commenced to make safes such as are in dispute. His testimony will be found at p. 271. It is explicit that there never was but one bar ("hoop") bent cold in that factory, and that they could not be so bent.

The witness cut out and assisted in bending the first bar containing the alleged invention that was made, the Interference testimony which is very full upon this subject does not anywhere dispute this fact, and he may be presumed to know what he is talking about. Nor is there any thing in the record in conflict with this witness, unless the wild statements of Moses Mosler, assignor of complainant, to be hereafter referred to, may be stated to be so.

It may not be amiss, in this connection, to state that both of the parties to the above interference, Mosler and Goehler, repeatedly recognized that it was this alleged capacity to be bent cold that dignified this cut into an invention. Thus, the rejected specification of Goehler, attached to file and contents, before referred to, refers to this three times: Once on the 289th page, and twice on the 290th page. Each of the two patents granted appellee, as assignee of Goehler, Respondent's Exhibits Goehler Patents Nos. 1 and 2, p. 273 *et seq.*, also state explicitly that it is this capacity of bending cold that gives it merit or invention.

Moses Mosler, alleged inventor of patents set up in bill of complaint, in his deposition, taken in the interference proceeding continually recognizes this capacity of being bent cold as the thing that dignifies this cut into an invention.

I will quote some of these allusions from Mosler, Interference Record, Moses Mosler's deposition, giving page and answer in each case, so that your Honors can examine context to verify the accuracy of the quotations, so as to be satisfied as to the precise meaning intended:

Answ. 4, p. 204: "So, about the middle of September, I went to see my patent attorney, Mr. Murray, to make an application for a patent for a round-cornered safe, with bent angle bars, bent cold, forming the circle, I had given Mr. Hemler to work by." * *

Answ. 23, p. 207: * * "I told him that in order to form that circle that it would be necessary to cut sufficient away from the upper web to permit the

angle, when bending cold, to form the shape that I desired." * *

Answ. 27, p. 209: * * "Mr. Hemler, who had done every thing in the matter of carrying out my views, in the construction of round-cornered safes, with cold bent angle bars, might also take a notion to leave." * *

"Answ. 35, p. 213 *et. seq*: "The idea then struck me *that if an angle frame could be made to be bent cold, and to avoid blacksmith work*, it would perhaps be advisable to make a round-cornered safe, as in this manner we would have an angle frame that would answer about the same purpose as a welded angle frame would, and at a greatly reduced cost."

Answ. 36, p. 215: * * "*As my clains had been allowed for the invention of constructing round-cornered safes with cold bent angle-bars.*" * *

Aansw. 61, p. 224: * * "I took him into the paint-room and showed him a safe constructed the same as we construct them now—round corners, cold bent angle bars." * *

Answ. 75, p. 228: "The specific instructions were that he take immediate steps to construct a round-cornered safe with cold bent angle bars, such as I had often spoken to him of." * *

Answ. 103, p. 234: "Mr. Hemler said he could very easily change the cut, as the tools and machinery were not made, and that he would at once go to work

at it, and hasten preparations for the construction of those round-cornered safes with bent cold angle bars."

Answ. 110, p. 236: "I think I exhibited 'Hemler Exhibit No. 1,' during the first conversations I had with Mr. Hemler on the subject of bending cut angle bars cold."

Fourteen times during this deposition this witness refers to the invention in question as the bending of cold angle bars.

Neither of the parties has ever used the alleged invention —though both tried to do so.

I have already pointed to the testimony of Thorwarth, who at the commencement of this manufacture worked for appellant, and was in position to know exactly what was done. He is most explicit, there never was but one bar bent cold at appellant's factory. His deposition at p. 271 is conclusive of this. The only other testimony in the record as to appellant's practice in this regard is Moses Moslers, printed at p. 259. This witness was called by appellee mainly for the purpose of stating the result of appellant's experience, and their practice in this matter. This witness states, (Ans. 6, p. 260): "To the best of my knowledge, I am positive that at first they were bent cold." And in answer 15 he states how he knows they were bent cold, because there were complaints about the quality of the iron, while "if they were bent hot there would be no occasion for such complaints." He does not know whether they were bent cold for "a week, a year, a month or a day," (Ans. 16 and 17); but promises to get this information, and subsequently reports that he

was informed, (Ans. 22), "that it was about two weeks that we bent them cold—*that's from the start.*"

Your Honors will observe that the above is a very careful statement. "From the start;" only two bars were bent in their factory during the first two or three weeks. The Interference testimony was quite explicit about this, (Thorwarth Ans. 58 *et seq.*, p. 71). There is nothing in conflict with this in the record.

In the first part of M. Mosler's deposition under consideration, and while he was still infatuated with the conceit that he could, single handed, swear it through that there had been a continuous use of cold bent angle bars at his factory, he was aked, (Q. 9), for the name of any workman who knew of this continuous use. He answered: "From the best of my recollection, I can only give the name of Stockle, who was one oi the first to work upon these angles." Stockle had already been examined in the Interference proceeding, (his deposition is at p. 106); he stated in Ans. 4 and 7 that he knew nothing about these angle bars until March, 1882, although the first bars were bent in November, 1881, and the "two weeks" of M. Mosler were in November, 1881. Instead, therefore, of wasting time on Stoeckle, after we got through with Mosler, we called Thorwarth, who had a more intimate knowledge of the early history of these bent angle bars than any living man, except Goehler, and the result is before your Honors, *viz.:* That there never was but one angle bar bent cold in appellant's establishment, and the Mosler continuous use for two weeks "from the start," during which time but two angle bars were bent, has no tendency to contradict Thorwarth.

This I submit is conclusive that angle bars, cut as pointed out in complainant's patents, can not be bent cold.

And as invention was only predicated of this form of cut because of the assumption that a certain utility was incident to it, *viz.*: An angle bar containing it could be bent cold, and now this assumption of utility having been demonstrated to be false it follows, of course, that there is no invention.

But I might go further, and allege that this cut, even when bent hot, is not only not useful, but that it is not practicable.

Mosler admits (Ans. 18, p. 262) that they did not use this cut at the time his deposition was taken, and refers to letters patent No. 284,047, granted August 28, 1883, as showing the cut now used by his company.

This patent I find is not in our record, but the reference to it as a public record permits it to be examined in this connection, and I may say, with the patent before me, that it has nothing in common with the cut shown in the Mosler patents involved in this controversy. Indeed the inner cut "facing the uncut side," or the "curved cuts meeting a right angle cut" that forms the whole of this controversy, are entirely wanting. In short it has the appearance of the Skidmore cut carelessly made.

This latest patent of Mosler was applied for, as appears by the patent, during December, 1882, and it is a fair inference that during all the time that they have been manufacturing safes for the market with round-corners they have used the cut there shown.

Turning now to the experience of appellee in this

regard: it has been before pointed out *ante* p. 19 that, from the very start, all its angle bars were bent hot, and, even then, they had to reinforce each angular joint with an additional piece of angle iron, securely riveted to the angle bar frame on each side of the joint or corner. Subsequently, but prior to the commencement of this suit, appellee changed its mode of manufacture. It then commenced to weld the corners, thus dispensing with these reinforcing pieces and rivets, and making better work at a great saving of labor and material.

"Models of Welded Round-corners, Nos. 1, 2, 3 and 4," show the various steps in making the rounded-corners as it is now practiced in appellee's factory, and substantially as it has been practiced in various safe factories for many years prior to the date of the alleged inventions in controversy, as will be hereafter pointed out.

The testimony of Charles Rippe, p. 250 *et seq.*, Qs. 11 to 18, will fully explain the above statements.

It ought to be added before parting from this subject, that neither Moses Mosler nor his Superintendent, who testifies to infringement in this case, thought, *while testifying in the interference proceeding*, that this angle bar, even upon the assumption then made, that it could be bent cold, involved invention. At least that was, and is, my understanding of their testimony, *vide*, Moses Mosler's testimony, Answs. 75, 76 and 77, p. 228–9, and Answs. 90, p. 232; and testimony of Michael Hemler, Answs. 139–145, p. 197, and Answ. 159, p. 201.

As I take leave of this question of the patentability

of the cut, it is appropriate to observe that your Honors will now understand why Goehler did not further contest the ownership of this invention, by further appeals in the Interference proceeding, and you will be enabled, too, to appreciate the "acquiesence" involved in refusing to further contest the doubtful honor of being the inventor of the cut in question.

NON-INFRINGEMENT.

Under the above heading I desire only to say, so far as claim 1 and 2 of Complainent's Exhibt B, and the claim of Complainant's Exhibit C, the claims for this cut in the angle bar, are concerned, that appellee used angle bars in their safes, cut, as shown in letters patent Respondent's Exhibit, Goehler, Patent No. 1, p. 274, up to August, 1883, when they commenced to weld their angle bars as is shown in Respondent's Exhibits Welded Round-corner, Nos. 1, 2, 3 and 4.

When they were cut according to the Goehler patent they were invariably bent hot, and protected by corner pieces as explained by Rippe, Ans. 4, 5, 6 and 15, p. 249 *et seq.*

If it be necessary to say anything further under this heading, which I doubt, then the only appropriate thing would be a comparison of the cut shown in the Goehler patent No. 1, and that shown in Complainant's patent Exhibit B. These are different *in form* and the Goehler patent was granted about eight months before the patent Exhibit B. No intelligent comparison of the substance of the two can be made without considering their relative utility; that is to say, if the fact that they differ in form, and the other fact that the

Goehler patent bears prior date be not conclusive upon this question, and it is insisted that, notwithstanding, they are in substance and effect the same, then the result of such comparison must be, if fairly instituted and carried out, that there is substantial identity between them, in this, that each is utterly useless, and as neither accomplishes, nor can accomplish, any useful purpose, neither involves invention, or can be infringed.

If the case required the statement, it might also be stated under this heading, that upon the assumption that appellee's former manufacture, when it used the Goehler cut and the bars were bent hot, infringed any of these patents, still this would not benefit appellant here; because it appears that prior to the bringing of this suit appellee had ceased this manufacture, *ante* p. 19. Nor is there anything in the record tending to throw doubt upon their then intention of finally and forever ceasing such manufacture, while the deposition of Charles Rippe is conclusive of such intention.

Such a case is not a proper case for injunction. There is nothing in the opinion of the Circuit Court upon this subject, but that is because it was not necessary for a proper decision of the cause; for the learned Judge, at the argument, discussed this question, and stated, hypothetically, the above view. See his decision a few months later:

Odell vs. Stout, 22 Fed. Rep. 159; particularly p. 169.

Two claims remain to be considered, *viz:*

Third Claim—Complainant's Exhibit B.

"In a safe, the combination of the front and back frames, formed of single bent angle bars, having one

side cut away to leave curved ends, upon which the uncut side is bent to form rounded corners, and a metal sheet, E, bent around and secured to said frames to form the top and sides of the safe, substantially as described."

Claim of Complainant's Exhibit A.

"The combination in a fire-proof safe, of the frames A, sheet metal cover B, bent around the top, sides and lower corners, with bars C and lower removable plate D, substantially as specified."

The first of these is for a safe frame composed of two or more angle bars, cut out in manner aforesaid, when such frame is covered with a sheet of metal, or in combination with such sheet of metal.

The second is for a combination of the same elements, with, in addition, a plate D upon the bottom, to permit of filling the concrete in at that end.

Both claims can be treated together.

At p. 14 of our record there is a stipulation, the first two paragraphs of which are as follows:

1st. "That prior to any of the alleged inventions of said Moses Mosler, referred to in the bill of complaint herein, fire-proof safes having their bottoms constructed like the wooden model marked Exhibit A, and referred to in the affidavits of Charles Rippe and John Hurst, now on file in the cause, were made and publicly used and sold in this country."

2d. "That round corner, fire-proof safes, similar to the safe shown to the Court at the hearing of motion for preliminary injunction in this cause, and now in the

possession of defendant, were made and publicly used and sold in this country prior to any of the alleged inventions of Moses Mosler, referred to in the bill of complaint, said safe being more particularly described and identified by affidavits of Theodore Waslauck, Ludwig Beer, and Charles Boercker, now on file in this cause."

Appellant has omitted to have copies of the affidavits referred to above made part of the transcript here, but it is not apprehended that any inconvenience can arise from this, as the exhibits stipulated show for themselves, and the uses of Exhibit A (marked "Exhibit A attached to the depositions of Charles Rippe and John Hurst") are fully described in the deposition of John Hurst to be referred to.

For the present it is sufficient to say that the Exhibit A shows the precise construction of the "bars c and lower removable plate D" of Complainants Patent Exhibit A, and the safe referred to in the second paragraph of the stipulation is offered in evidence by appellee, (Rec. p. 253); as Respondent's Exhibit, St. Louis Round-cornered Safe." It shows the "metal sheet, E, bent around and secured to said frames to form the top and sides of the safe," which is an element of each of the claims under consideration.

These features stipulated, as above, are the only elements to be found in any of the claims sued upon, in addition to the cut of the angle bar.

Fire-proof safes built upon angle bars, and having their bottoms constructed like Exhibit A, so as to be filled from the bottom, in exact accordance with these features of complainant's patents, were made at Hall's

Safe and Lock Factory, in large numbers, years prior to the date of Mosler's alleged invention. The angle bars in this manufacture were cut and welded exactly as shown in Respondent's Exhibits, Welded Round-corner, Nos. 1, 2, 3 and 4; that is exactly as appellee's similar manufacture is now carried on, except that the safes so made at Hall's had, when finished, square corners, and not round corners. But, in the process of making these safes at Hall's the bending of the angle-bars *necessarily produced* a round-corner. Such a piece of iron *could not be bent so as to produce a square corner.* After they were bent and welded, the iron upon each side, up to the corner, was hammered, or "staved up" so as to make the corners of the safes square. This, because square-cornered safes were then fashionable. Panel safes, with square-corners, were then *the mode.* They did not put "metal sheets around the top, sides and lower corners of these safes," for such metal sheets are not adapted to square-cornered panel safes. But at the same time that this manufacture was carried on at Hall's, other safes, known indifferently as "Messenger Boxes," "Express Boxes" and "Express Safes" were being made upon angle bars, cut and welded at the corners in the same way as the fire-proof safes referred to, and having this metal sheet around them. This latter class of safes are made to be carried on railroad cars, by express messengers, and as they are intended only to resist thieves and burglars, they have no filling to resist the effect of fire—hence they have no arrangement for filling, from the bottom or otherwise. These express boxes have the metal sheets surrounding them, sometimes upon the outside of the angle bar frames, as in appellant's and appellee's

manufacture, and the Exhibit St. Louis Safe, and sometimes the angle bar frames are outside the sheet metal cover or envelope. The angle bars in these safes were usually permitted to remain round on the corners, though, sometimes, when a specially nice one was wanted, they "staved up" the corners in the same manner they did the fire-proof safes. In addition to this the Cincinnati Safe and Lock Company filled *all* their fire-proof safes from the bottom—and of course used "the removable plate D and bars c."

Above statements are all proved by the deposition of John Hurst, (Rec. p. 256), which is short and to the point.

It was not deemed necessary to put any of these Hall, or Cincinnati Safe and Lock Company safes or express boxes in evidence, because all the facts above stated were and are notorious, and the exhibits at present in the case illustrate the different constructions.

No doubt your Honors have seen these express boxes in the Adam's or some other express company's wagon, or being loaded or unloaded as you have passed their doors, for their use has been general for many years. They are familiarly referred to by most of the witnesses who have testified. (Hemler, Q. 139 *et seq.*, p. 197–8. M. Mosler, Q. 90, p. 233.)

As this Hall manufacture of fire-proof safes upon welded angle bars, with the corner "staved up" and filled from the bottom—substantially appellee's present manufacture—depended upon the testimony of the witness Hurst, appellant made a mild attempt to contradict it in rebuttal.

The proof by Hurst was of a manufacture so general, so long continued, so public, and so clearly ahead of Mosler's alleged invention, that it appeared to the writer hereof that he would not be justified in calling a number of witnesses, thereby unnecessarily increasing the size of the record, and the cost of the litigation, to prove such a matter.

The fact, however, that appellee had called but *one* witness for this purpose, evidently, was not without its effect upon appellant.

The witness called by appellant for this purpose was Theodore Moellers, whose deposition is printed at p. 284.

He admitted at the start, however, (Ans. 4 and 18 *et seq.*), that two such safes were made at Hall's for the Vienna Exposition more than ten years before.

He also stated (Ans. 7 and 8) that no more were made so long as he was in the fire-proof department, and that he left Hall's employ only a little over four years ago—"five years ago next June, I think." These answers, taken in connection with his second answer (that he was foreman in the fire-proof department until he left Hall's employ), would amount to a statement that safes of the kind referred to had not been made at Hall's between 1874 and 1880. Now, inasmuch as Hurst testified that he left Hall's about six years ago (1878) (Ans. 3, p. 256), and that the safes in question —the continuous manufacture, had been made after 1875, or after 1876, (Ans. 27, p. 258), there was conflict in the depositions. This conflict disappeared in the cross-examination, when Moellers admited (Ans. 23 to 28, p. 287), that Tom McCormick came to work

as foreman in the fire-proof department as he was leaving—that McCormick took Moellers' place. Hurst's testimony was (Ans. 22, p. 258), that the manufacture in question occurred while McCormick was foreman.

Moellers also admitted, in above referred to answers, that he ceased to work in the fire-proof department between 1875 and 1877, and that afterwards he knew nothing of what was done in that department.

It is then, indisputably, proved that safes built upon angle bars having round-corners, and having square-corners, were old; that round-corner safes, built upon angle bars, and covered with a sheet of metal "upon the top sides and lower corners" were old; that safes built upon angle bars—as well as panel safes—have had the "bars c and lower removable plate D" to enable them to be filled from the bottom. But it has not been proved that either the "bars c and lower removable plate D," or the sheet metal envelope E, have been used in connection with angle bars that have *the special cut* shown in complainant's patents.

The inquiry here is, does this special cut in the angle bar modify the operation, or at all affect the use, of either the bottom plate D and its supporting ledges, or the sheet metal cover E, or does either of these devices affect or modify the operation of this special cut; or does either the plate D and its ledges, or sheet metal cover E modify or at all affect the function of the other? If the answer be, as it must, in the negative then these things are not *in combination.* The bottom plate and its sustaining ledges permit the safe to be filled from the bottom, and, obviously, it makes no difference, so far as the performance of this, or any

conceivable, function of this plate and its supporting ledges are concerned, whether the angle bars are cut out in the corners or not, or whether or not there are any angle bars in such safe, or whether the safe has round or square corners, or panels or surrounding sheet of metal.

The same is just as true, and just as obvious, with reference to the metal sheet E.

For instance: it is stated by counsel that "Respondent's Exhibit St. Louis Safe" is not built upon angle bars Suppose this to be so, does the sheet metal cover surrounding it perform any different, or other, function from what the similar sheet metal cover upon appellee's safe in evidence performs? Or does the sheet upon the latter perform any function that is not performed by the sheet upon the former? It is submitted, that this subject has received so much attention in this Court recently as to make it unnecessary to further discuss it now—especially in such a case as this.

In Hailes vs. Van Wormer, 20 Wall, p. 368, Mr. Justice Strong says:

"It must be conceded that a combination, if it produces new and useful results, is patentable, though all the constituents of the combination were well-known and in common use before the combination was made. But the result must be a product of the combination, and not a mere aggregate of several results each the complete product of one of the combined elements. Combined results are not necessarily a novel result, nor are they an old result obtained in a new and improved manner. Merely bringing old devices into

juxtaposition, and there allowing each to work out its own effect without the production of something novel, is not invention. No one by bringing together several old devices without producing a new and useful result, the joint product of the elements of the combination, and something more than an aggregate of old results, can acquire a right to prevent others from using the same devices, either singly or in other combinations."

And in Pickering vs. McCullough, 104 U. S., p. 318, Mr. Justice Mathews says:

"In Nimmo's apparatus it is perfectly clear that all the elements of the combination are old, and that each operates only in the old way. Beyond the separate and well-known results produced by them severally, no one of them contributes to the combined result any new feature; no one of them adds to the combination any thing more than its separate independent effect; no one of them gives any additional efficiency to the others, or changes in any way the mode or result of its action. In a patentable combination of old elements, all the constituents must so enter into it as that each qualifies every other; to draw an illustration from another branch of the law they must be joint tenants of the domain of the invention, seized each of every part, *per my et per tout*, and not mere tenants in common, with separate interests and estates. It must form either a new machine of a distinct character and function, or produce a result due to the joint and co-operating action of all the elements, and which is not

the mere adding together of separate contributions. Otherwise it is only a mechanical juxtaposition, and not a vital union."

See also

Reckendorfer vs. Faber, 92 U. S. 347.

Heald vs. Rice, 104 U. S. 737.

Hailes et. al. vs. The Albany Stove Company, 123 U. S. 586.

Respectfully submitted,

JAMES MOORE,

Counsel for Appellee.

REPLY TO APPELLANTS BRIEF.

I beg leave to offer a few words in reply to appellants brief, not to any argument contained in it, but only to some of the assertions, and omissions amounting to assertions, therein.

1st. The brief in question says, p. 28, "But the admission under oath that an invention had been made in the production of the devices in interference is true and binding upon respondents."

The predicate of this, and immediately preceding it in the brief, is a quotation from respondent's answer in which the word "invention" is used, and italicized in the brief; and inasmuch as the answer used the word invention, and not *alleged* invention, the argument is that this is an admission of invention shown in complainant's patents.

All this is to be taken in connection with the analysis of the defences in respondent's answer, set out in accordance with the rules, at p. 8, of complainant's brief. This analysis nowhere states that respondents denied that complainants showed any invention. The answer at page 10 of the record has this language: "And it denies that any or either of said patents show any invention whatever."

2d. Appellant's brief states, p. 11, under the head of "Infringement": "On the question of infringement there can be no doubt. It is admitted in the answer record p. 11."

Upon turning to the answer the only allegation found upon this subject is as follows, and as it is at page 11 of the record, I presume it is the allegation referred to in the brief:

"Respondent, further answering, denies that it has infringed either of said patents, or that it has made or sold since the dates of said patents, respectively, any safes containing either of the inventions described and claimed in either of the patents upon which the bill of complaint is founded, but it alleges that prior to the commencement of this suit, it has made and sold safes in accordance with letters patent No. 268,010, granted upon the invention of G. J. H. Goehler, Nov. 28th, 1882, for 'bending angle iron' to this respondent."

3d. Appellant's brief p. p. 14, 15 says: "In the prosecution of Goehler's application, which was in interference with Mosler's application, this same Skidmore patent was cited against the claim now sued upon, and Mosler, Bahmann & Co.'s counsel succeeded in convincing the examiner that the reference was not pertinent."

The undersigned is the only "counsel" that Mosler, Bahmann & Co. has, or had, and if the above be true, not only is it a reflection upon his sincerity in the present case, but it is a serious reflection upon the defense; but if it be not true it indicates an indisposition upon the part of counsel to frankly discuss the question adverted to, and, leaving out of view the

question of ethics involved, is merely a begging of the question. Is it true?

a. I never had anything to do with the application referred to until the Interference was declared, Rec. 299.

b. The examiner never was convinced that the Skidmore patent was not a pertinent reference. On the contrary, when the preliminary Interference was declared, the examiner used this language: "Applicant is hereby informed that there is pending before the office another application for patent, which describes and shows the same invention that the applicant describes and shows, and that so much of the invention in the two cases as is new—*regard being had to the English patent heretofore referred to in this case*—are in conflict. * * " Rec. 297–8. And as may be seen by examining the pages just referred to, the examiner never did retract, or modify that language.

c. The solicitor, acting for Goehler in this matter, never did attempt to show that the reference to Skidmore was not pertinent; he distinguished between the latter and the claim he was advocating upon the ground that a bar having the Skidmore cut required to be heated, while the cut of Goehler would, as he was then informed, permit of bending cold. Ante p. p. 13 to 19.

In connection with this it appears pertinent to observe that appellant's brief, in stating the evidence offered by respondent, p. 10, omitted to refer to "Respondent's Ex. Goehler File and Contents," which is printed at p. 288, and contains the matters above referred to; but did refer to an emasculated skeleton of that exhibit (p. 10), offered by complainant and printed at p. 36, rec.

4th. The brief in question contains at p. 33 *et seq.* a great deal of matter for the purpose of showing that upon the introduction of the round corner safes by appellant their business greatly increased. This for the purpose of enabling the inference to be drawn that there was invention in it. Sticking to my expressed purpose of commenting only where the *suggestio falsi* or the *suppressio veri* appears in the brief commented upon, I will limit my remarks here to calling attention to the deposition of Moses Mosler, A. 31 to 34 inc. p. 264. This shows the substance of the then situation. One Warner, who now runs a patent medicine factory at Rochester, N. Y., which medicine, from a recollection of his ancient trade, he calls "Safe Medicine," and which he advertises by means of an observatory and a system of rewards for each newly discovered planet, was the selling agent of appellee. He took all its product at certain agreed prices. Appellant made an agreement with this Warner whereby he ceased to sell any of appellee's safes, and sold only appellant's. This taking away of the custom that it had required appellee a large fraction of a century to build up, of course, gave quite an impetus to appellant's business, and correspondingly injured appellee's. And now in harmonious correspondence with the special business aptitude that enabled appellant to accomplish this characteristic piece of business, it comes coolly in here and says that this increase of business was owing to the change in their manufacture from a square-cornered to a round-cornered safe!! That, is counsel so states in effect, but Mosler hesitated about going so far. Vide A. 33, p. 265.

5th. The appellant's brief, p. p. 37 to 41, has a series of crotchety remarks about the safes built upon angle frames, and filled from the bottom at the Hall's Safe & Lock Co., that are entitled to a little attention. The exact facts with relation to this manufacture were stated, accurately, though not very fully, at p. 29 *et seq.* ante.

Complainant's brief, p. 37, says: "Moeller says there were no such safes made at Hall's Safe & Lock Co. while he was there, and he was there from the war times until 1879 or 1880 * * ."

I quote from Moeller's testimony p. 285 *et seq.*:

Q. 7. "During the time you were employed by Mr. Hall, or the Hall's Safe & Lock Co., were any other safes made by said company, or in the department of which you had charge, having the continuous angle bar forming the back and front frames of the safe, similar to those you say were made to be sent to the Vienna Exposition?"

A. "No, sir; not as long *as I was in that department.*"

Q. 8. "Can you state the year *you left the employ* of the Hall's Safe & Lock Co.?"

A. "Five years ago next June, I think."

And p. 286:

Q. 24. "Did you know Tom McCormick who worked there, and when was he foreman in the fire-proof department, if ever?"

A. "I know him. After I left he got my place as foreman in the fire-proof department."

Q. 25. "Now, are you sure what year *you left there*?"

A. "I think it was seven or eight years ago. I left for one week and was hired over again in the burglar-proof department, and had charge of putting on locks and bolts and burglar work."

Q. 26. "Then how long did you work in the burglar-proof department?"

A. I think nearly two years, or a little over."

Q. 27. "Then you ceased to work in the fire-proof department between 1875 and 1877? Is that right?"

A. "Yes, sir."

Q. 28. "You don't know what was done in the fire-proof department after you went upon burglar work, do you?"

A. "I do not know. It was on the other side of the square."

It will be observed that by confusing the time when the witness left the fire-proof department with the time when he left the employ of the Hall Company, or rather by obscuring their different dates, the writer feels himself enabled to state that no such safes were made by the Hall Company until 1879 or 1880.

There is not the slightest conflict between the testimony of this witness and that of Hurst. Hurst was examined (p. 256 Rec.) first, and like Moeller, he had not an accurate recollection of dates, but there can be no doubt at all that he left Hall's finally at or before 1878, and that the continuous manufacture of the safes in question occurred prior to that date (A. 3, 25 to 28, inc.) Nor is there anything inconsistent with this in the record.

Complainant's counsel states at p. 40 of his brief, that Hurst's "testimony is uncertain, contradictory

and vague." I am wholly at a loss to understand why such language should be used with reference to Hurst's testimony. I ask, is it not certain, consistent, clear and natural throughout?

If appellant desired to question the truthfulness of Hurst's testimony, why did he not call Tom McCormick, the foreman of the fire-proof department when the manufacture commenced, or the superintendent of the shops, Corry, or Mr. Hall, or some person, indeed any person, who worked in that department at *or after* McCormick became foreman?

I might, indeed, further ask why did not counsel insist in the Court below that respondent did not have proof enough upon this head, when the Court could have stepped around the corner and satisfied himself in a few minutes that this manufacture was so notorious and continuous that the Court might well have been asked to take judicial notice of it? Vide Hurst 16th, p. 257.

It is hardly necessary to observe that the testimony of Sargeant, the "commission salesman," who is not proved to have ever been inside of Hall's factory, or of Moses Mosler, of whom the same remark may be made, can have no bearing upon this question.

6th. The brief in question at p. 16 says: "They were like the St. Louis safe abandoned experiments." I assume that your Honors will in this connection read the whole paragraph of which the above is part. It is the first paragraph on the page.

The statement is that the use represented by "Respondent's Ex. St. Louis Safe" is but an abandoned experiment. Where in the record is the proof of that?

The second paragraph of the stipulation, p. 14 rec. which made this exhibit evidence, does not so state, and is in violent conflict with such statement.

That paragraph of the stipulation makes the affidavits of Theodore Waslauch, Ludwig Beer and Chas. Boercker evidence upon the merits in this cause. I had occasion to remark upon the absence of these affidavits from the transcript at p. 29 ante, and said that I did not apprehend any inconvenience from appellant's mistake in omitting them. That was, however, before I saw their brief. But it appears that advantage is to be taken of their absence to make statements in contradiction of them. Complainant's brief at place last indicated says: "Had such safes been a success respondents would not have failed to put on Waslauch, the maker, or some safe maker, to testify to their practibility, and the extent of their use."

I don't clearly see the necessity of that; but, what is more germane to this statement, is that these affidavits were properly stipulated into the case, and they show these things exactly.

Enquiry and examination at the Clerk's office have not enabled me to find the affidavits of Beer and Boercker, but the affidavit of Waslauch is now before me, and will be brought, properly authenticated, before your Honors. It describes the safes in question. It says they were extensively manufactured in Hamburg, Germany, as early as 1858, and shipped to Australia and South America; that he started their manufacture in 1869, in St. Louis, Mo., and at the time of making the affidavit still had them on sale in his store. He goes on: "About six years ago and when making these

round cornered safes, I had in my employ a journeyman by the name of Charles Hirche, who subsequently left me and obtained employment with Messrs. Beard & Bro., safe manufacturers at this place, and after Chas. Hirche had been with them a short time they also commenced the manufacture of round corner safes on the same plan as I did. Charles Hirche left me in the spring of 1880. I am acquainted with Mr. Moses Mosler, who occasionly visited me when he came to this city during the last four or five years. Mr. Moses Mosler saw the round corner safes in my store and remarked that they looked very well, and that their appearance was an improvement upon the panel safes; and I learned that afterwards the Mosler Safe & Lock Co. commenced the manufacture of round corner safes also."

Moses Mosler testified in this cause, but he did not attempt to contradict that.

The four or five years stated in the affidavit, taken in connection with its date, would place Mosler's visits to affiant in the fall of 1878 or 1879,—two clear years ahead of the present manufacture.

While I do not recollect the contents of the other affidavits, and, unfortunately it may be, am not specially talented in making assertions, I have no hesitation in stating that they show a more extended use of these safes than Waslauch's affidavit does.

7th. The brief says, p. 29, the appellee "continued and still continues to pirate the invention it sought to obtain by bribery, perjury and subornation of perjury."